

104  
**ENDANGERED SPECIES ACT IMPLEMENTATION**

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Endangered Species Act Implementati...

**OVERSIGHT HEARING**  
BEFORE THE  
**COMMITTEE ON RESOURCES**  
**HOUSE OF REPRESENTATIVES**  
**ONE HUNDRED FOURTH CONGRESS**  
**SECOND SESSION**

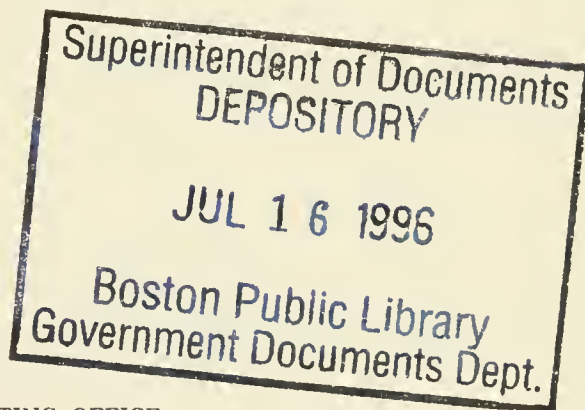
ON

**THE IMPLEMENTATION OF THE ENDANGERED SPECIES ACT, PRIVATE PROPERTY RIGHTS AND WHETHER PRESENT POLICIES HAVE RECOVERED THREATENED OR ENDANGERED WILDLIFE**

MARCH 20, 1996—WASHINGTON, DC

**Serial No. 104-59**

Printed for the use of the Committee on Resources



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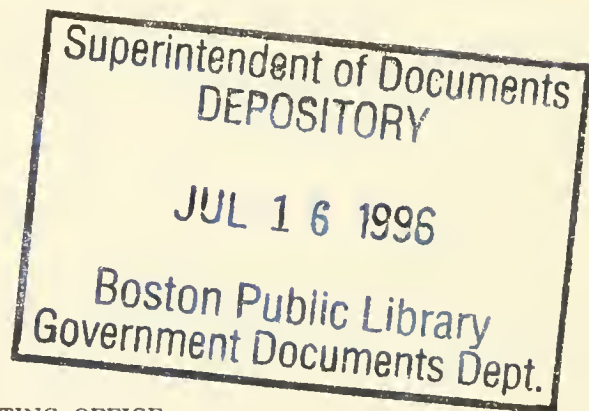
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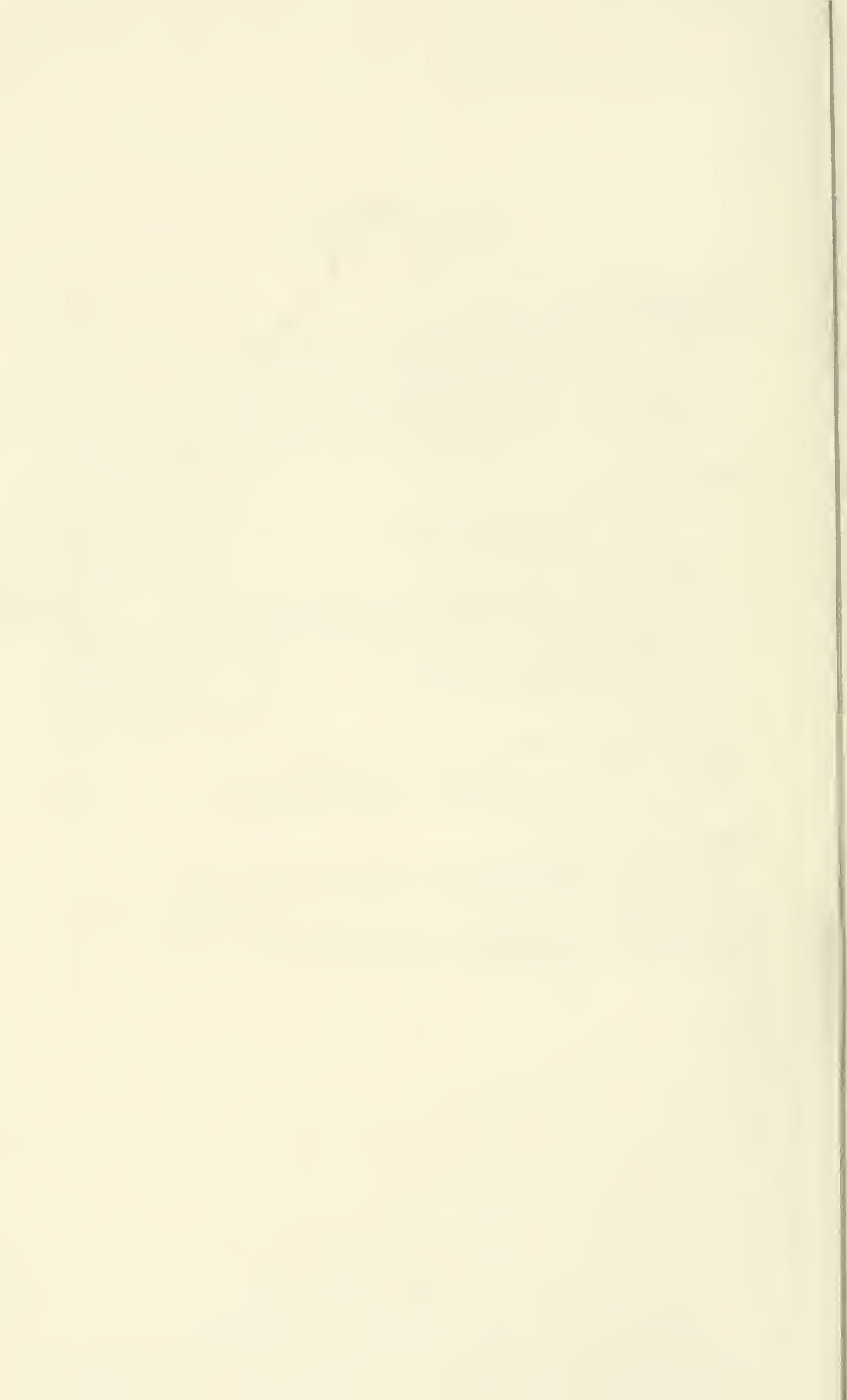
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# ENDANGERED SPECIES ACT IMPLEMENTATION

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WEDNESDAY, MARCH 20, 1996

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON RESOURCES  
*Washington, DC.*

The Committee met, pursuant to call, at 11:08 a.m., in room 1324, Longworth House Office Building, Washington, D.C., Hon. Don Young (Chairman of the Committee) presiding.

## STATEMENT OF HON. DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA; AND CHAIRMAN, COMMITTEE ON RESOURCES

The CHAIRMAN. The committee will come to order. Good morning. I would like to welcome all of you to this hearing on the implementation of the Endangered Species Act.

Many of you may be wondering why we are holding more hearings on the ESA after this committee has already ordered a bill reported that would re-authorize and amend the current ESA. It is the responsibility of this committee to continue to oversee this important law, and our work is not done.

This committee did a great job in 1995 of listening to the people throughout this country. Over 25 hearings were held. We heard their concerns, their complaints, and their praise of the ESA; however, there are still issues left unresolved.

The purpose of this hearing and more hearings to come is to continue to keep a watchful eye over the Federal agencies that many complain has been more willing to punish our citizens than to praise them for owning and properly maintaining their property that is habitat for wildlife. I want to stress that to the agencies themselves.

We want a law and a government that recognizes that the true way to protect wildlife and plants is to increase their value to every citizen, including those who provide them with the food and the shelter. It is no surprise that many species that depend on habitat continue to decline when the government takes an approach that discourages good conservation and management of land for habitat.

This hearing will examine how the Fish and Wildlife Service and, in some cases, the courts have abused and harmed our wildlife protection efforts by abusing our citizens, citizens of this United States, the very people that have been forced to turn their private lands into federally ordered wildlife preserves without compensation.

With over 90 percent of the habitat for endangered and threatened species being on nonFederal lands, it is important that pri-

vate landowners become part of the solution toward preserving species on the inside instead of put on the outside by the agencies.

I plan to hold additional hearings, and we expect that Secretary Babbitt will appear before this committee to account for his actions and the actions of his agencies in the near future. We would also like to point out that we asked the minority to participate in selecting the witnesses for this hearing, but they refused our offer and they call that good government.

I am sorry that they are not willing to give us their input; however, we have some good witnesses here today who will give us the benefit of their experiences with the current Endangered Species Act.

It takes great courage for an individual private citizen to be willing to appear in public and criticize an agency that has enormous power over his or her life and property. There are some individuals whom we have asked to testify who were afraid. Imagine, this is America, but they said to us that they would be afraid, would be the object of retaliation, were afraid to speak out publicly. This is our government in action.

If any witness at this hearing is harassed or feels they may be retaliated against by any part of this agency that is now overseeing you, speak out. I want you to contact this committee and we will take the appropriate action.

I want to thank each witness for your courage and your good citizenship, which is evident by your willingness to speak out today. I thank you, and I now recognize the gentleman from Michigan, Mr. Kildee.

**STATEMENT OF HON. DALE E. KILDEE, A U.S.  
REPRESENTATIVE FROM MICHIGAN**

Mr. KILDEE. Thank you very much, Mr. Chairman. Mr. Chairman, I wish we had had hearings on the Endangered Species Act before we reported out the bill last September. I am very alarmed and very disturbed by the bill that was reported out last September. I think it is not in the best interests of the people of this country, and I wish we had had extensive hearings, which I would have participated in, had we had them before that—

The CHAIRMAN. Will the gentleman yield? We had 25 hearings, and you were invited.

Mr. KILDEE. I was at many of the hearings, Mr. Chairman. I think we prematurely reported the bill out without proper input, and many of the hearings of this committee have been arranged somewhat differently than what I have been used to in my 32 years of legislative experience where we had task forces. Very often, the task force substituted for the traditional subcommittee hearing system.

The CHAIRMAN. If the gentleman would yield again, I will state for the record—

Mr. KILDEE. I said this—

The CHAIRMAN [continuing]. that there were 25 hearings. There were more hearings on this legislation. On the original ESA, we had two hearings, and that is all we had in Washington, D.C., on an act that caused great disruption to the private property holders and is in fact destroying species.



Mr. KILDEE. And I think you and I, Mr. Chairman, have the highest record of attendance at the hearings of these committees. I still feel that I am alarmed and disturbed by what we did report out, because I don't think we had really adequate input as to the consequences of the bill that was reported out.

I say that, and you and I have worked, you have been open with me and I have been open with you, and we can be open in the open, but I feel that with all due respect.

The CHAIRMAN. I will just say one more thing to the gentleman from Michigan. There were five Democrats that did vote for this bill during mark-up as we reported it out, so it was a bipartisan effort.

Mr. KILDEE. I have their names out here.

The CHAIRMAN. I know you do, and they will be there next year, too.

The gentleman from New Jersey.

### **STATEMENT OF HON. JIM SAXTON, A U.S. REPRESENTATIVE FROM NEW JERSEY**

Mr. SAXTON. Mr. Chairman, thank you very much. Let me express my appreciation to you for two things; one, for holding this hearing this morning, and secondly, for being willing to talk with me on an ongoing basis about re-authorizing, form a consensus and re-authorized the Endangered Species Act this year.

Everyone should know that a week doesn't go by when Mr. Young and I meet either on the floor, sit alongside each other, or in his office or my office or in some other location to talk about this issue, because while there are differences of opinion about how the Endangered Species Act should be re-authorized, I think there is a common desire to move to a re-authorization.

As many in this room know, I have been diligently working both inside and outside the Congress with Mr. Young and others to bring about a consensus bill to re-authorize this act. In that spirit, I have reached out to various groups that have been involved in this effort. I have spoken to many members of the environmental and regulative communities. I have worked with timber interests, with business interests, with environmental interests, and with private property landowners to attempt to develop a middle ground on this issue.

It has been difficult, but real progress has been made, and I hope that this progress will continue. I believe today's hearing will be another step in that process. This is the only course we can take to get this important environmental legislation through this Congress and signed by the President.

There are four points that I want to make, Mr. Chairman, about ESA. First, the Endangered Species Act needs reform to provide certainty to regulated landowners as well as proactive protection for endangered species.

I have provided certainty in a bill which I am currently drafting by codifying a provision called no surprises. This policy for large and small landowners would provide just that as time moves forward, no surprises. If an agreement is reached about the use of land between the landowner and the regulators, then that would



be in the negotiation and no surprises would take place for the landowner later on.

I have tried to create a variety of voluntary incentives that can be used by large and small landowners to encourage protection of species and habitat. We have streamlined the habitat conservation process to reduce the time, the costs for landowners, thereby encouraging the development of these plans so that more species can be protected. In these ways, we have attempted to give real regulatory relief to large as well as small landowners.

Second, the bill which I hope to introduce soon, the Endangered Species Act obviously needs to be re-authorized, as I have said before, this year. The Speaker has made it clear that he agrees with the urgency of this matter, and I know Mr. Young does as well.

Third, the issue of compensation must be addressed, and we take steps to address the issue of compensation in the bill we have been working on. It is a difficult issue to address because of the enormity of the land mass that is involved and the enormity of the number of species that are involved as well, but the issue of compensation, I agree with you, Mr. Chairman, must be addressed and we are taking steps in our bill through a variety of mechanisms to address that issue.

Fourth and finally, only a reasoned, negotiated compromise bill will achieve the objectives that we have set out, and so I hope that today's hearing will lead us in that direction.

I began to work to find this middle ground on many contentious issues. That work is rapidly gaining momentum. I realize there are legitimate concerns left to be addressed, but we must face the reality that those are a fight for another day. Our issue this year is to re-authorize the bill, and I believe it has to be a consensus bill.

Today is the time to take the brave step forward and pass this decent compromise Endangered Species Act re-authorization. I look forward to continuing to work with you, Mr. Chairman, and again, I thank you for your open-mindedness on this issue, and your willingness to talk with us both on member levels as well as on the staff level.

Thank you very much.

The CHAIRMAN. Thank you, the gentleman from New Jersey. The gentleman from Maryland.

#### **STATEMENT OF HON. WAYNE T. GILCHREST, A U.S. REPRESENTATIVE FROM MARYLAND**

Mr. GILCHREST. Just very quickly, Mr. Chairman. I appreciate your holding this hearing so we can hear more information. I think the key to the success of the re-authorization of the Endangered Species Act or as some people have said, a sense of understanding that biological diversity is important to the quality of life. For people, it is very valid and the key to the success of that endeavor is information, so that is what this hearing is about today.

Some of the more contentious points in the existing bill as Jim has mentioned and the Chairman has mentioned, is the issue of compensation. I think that can be worked out for people who want to be a part of the conservation programs.

The other issue is the issue of take. What is the definition of take; what is the definition of harm that has been decided by the

Supreme Court, but there is still contention lying or residing in that particular area, and I think more information with an understanding of what the definition of harm is and what the definition of take can be should be legislated.

Recovery is an area that is still somewhat contentious. What are subspecies and why are they important, that is an area that I think we can continue to work at, and those are some of the four or five main features where the people, at least in Congress, find some differences of opinions on, but I hope today, we can listen to those who have real life experiences, so that we can incorporate their stories into a compromise, not so that people compromise their values and not so we compromise your right to property and your right to have your livelihood taken away, but we can develop a bill that is in some sense a bill that incorporates cooperation on the part of the Federal Government, the state governments, the local governments, and the private landowners.

There are many positive examples of the Endangered Species Act, so we ought to look at those and see how we can incorporate them into an existing bill, and there are also some problems with the Endangered Species Act where the Federal Government and in some instances, Federal employees, have become a little bit too maybe even dictatorial in their administration of the law. We have to understand those so that they can be administered in a much more user-friendly fashion.

Finally, I think if we all understand, and this is just a small sliver of philosophy, Mr. Chairman——

The CHAIRMAN. I will indulge the gentleman. Go ahead.

Mr. GILCHREST. Thank you very much. The green light is still on.

A little bit of philosophy, I guess. You know, we all live on the planet together in this tiny little space in an infinite, hostile environment called the universe, and I am certain that intelligent minds and reasonable people will recapture that spirit that this country used to have when we had a great frontier, and that is, how can we help our neighbors, so if we have a problem with the golden sheep war, if we have a problem with fairy shrimp, if we have a problem with any particular species that somebody has listed as endangered, the first thought ought to be how can we help our neighbors and ourselves in this particular endeavor and save biodiversity?

It used to be that neighbors had to help neighbors build barns, whether it was in Montana or Alaska or some other place, because the winter would have killed their animals if they didn't help. This is a nation that has become a nation of disstature that we know of as America, not because we have isolated ourselves and gone after what is good for me, but because we have expanded our horizons.

We don't have a frontier to move into any more. We can't get away from it all like we used to, so our new frontier is intelligent cooperation with few and limited resources, and I am sure we can all be successful in that endeavor.

Thank you for your indulgence, Mr. Chairman.

The CHAIRMAN. You are quite welcome. I can only suggest one thing. We would even not have these hearings nor any need to take and renew the Endangered Species Act if the agencies hadn't be-



come dictatorial. That is what's happened; this is why we have to do something to keep them really in line about what America is all about.

The gentleman from Virginia, Mr. Pickett.

Mr. PICKETT. Mr. Chairman, I do not have an opening statement. I simply want to welcome the witnesses who are here today. Thank you.

The CHAIRMAN. Thank you, Mr. Pickett. The gentleman from—I am going to do this because he has been sitting here longer than the other gentleman from California, Mr. Calvert, Chairman of the Subcommittee on Energy and Mineral Resources.

#### **STATEMENT OF HON. KEN CALVERT, A U.S. REPRESENTATIVE FROM CALIFORNIA**

Mr. CALVERT. Thank you, Mr. Chairman. I would like to take a quick moment to thank you and my friend, Mr. Pombo, for all the hard work that you have done on ESA. Richard, as you know, is on the Ag Conference Committee, and I think he is tied up.

You have both done an outstanding job, and I, for one, appreciate your efforts. I would also like to welcome a constituent and a close friend. The committee will be hearing testimony from Cindy Domenigoni later this morning and others are here from my home area of Riverside, California.

Some of you may remember the dramatic story regarding her family's ranch and the Winchester fires of 1993. This is just one example of how the original intent of ESA has gone awry and why we must reform this law now so that what happened in 1993 will never happen again.

Thank you, Cindy, for coming out, and I thank you, Mr. Chairman, for holding these hearings.

The CHAIRMAN. I thank the gentleman, Mr. Calvert. The gentleman from Massachusetts, Mr. Torkildsen.

#### **STATEMENT OF HON. PETER TORKILDSEN, A U.S. REPRESENTATIVE FROM MASSACHUSETTS**

Mr. TORKILDSEN. Thank you, Mr. Chairman. Just very briefly, I applaud you for holding this oversight hearing. I personally think the Endangered Species Act has done enormous positive good. It has not been perfect. I know we need to make some changes in it, but I don't think that should underscore the enormous improvement that we have seen since it was first enacted, and I hope we can all keep a focus on that.

Let us keep the very significant positive effect ESA has had throughout our country. While we are hopefully just fine tuning it, let us not throw out the good with the bad. Let us keep the many, many good parts of ESA.

I thank the Chairman.

The CHAIRMAN. I guarantee we will get rid of the bad and have a good bill.

The gentlelady from Washington, Mrs. Smith.

Mrs. SMITH. No comment, Mr. Chairman.

The CHAIRMAN. No comment. The gentleman from Texas.

Mr. THORNBERRY. Mr. Chairman, I don't have a statement either. I have spoken on this issue several times.

I appreciate the chance to have these hearings, and hopefully, we can get an Endangered Species Act this year, because it does need to be reformed.

The CHAIRMAN. I thank the gentleman. If there are no more opening statements, I would like to call panel one to the table.

Dr. Terry Maple, Zoo Atlanta, Atlanta, Georgia; reminds me of the airport. I just flew out of there this weekend.

Mr. DOOLITTLE. Mr. Chairman.

The CHAIRMAN. Excuse me, Mr. Doolittle, I am sorry.

Mr. DOOLITTLE. I knew I had to wait, but I didn't think that my punishment was that severe.

The CHAIRMAN. Before you continue, Mr. Doolittle, I would like to bring the panel to the table so we can get going. Cindy Domenigoni from Winchester, California; Margaret Rector, from Austin, Texas; Lloyd A. Good, Jr., Lower Sugarloaf Key, Florida; and Faith Campbell, Washington, D.C.

Now, Mr. Doolittle, it was an oversight, and I apologize.

#### **STATEMENT OF HON. JOHN DOOLITTLE, A U.S. REPRESENTATIVE FROM CALIFORNIA**

Mr. DOOLITTLE. Mr. Chairman, I commend you and Mr. Pombo for the hard work you have done in this area. I think this hearing is important.

I have sat through a number of the hearings around the country. We have heard testimony, and I think it is important to keep hearing the experiences of individuals as they run up against this act so that we can all come to a better understanding when we seek to reform it, protect our legitimate endangered species, and at the same time, show the necessary deference for the Fifth Amendment rights granted to us under the Constitution.

I look forward to hearing the testimony.

The CHAIRMAN. Thank you, Mr. Doolittle. The witnesses will understand that you have five minutes to give your testimony, and I have been somewhat lenient, but try to keep it within five minutes, if possible.

I know some of you have a longer story to tell than that, but if you do have, when I start tapping the end of my gavel, please pay attention to that.

Secondly, after each one of you have given your testimony and we are all finished, there will be questions from the Members of Congress, and they also will be limited to five minutes' worth of questions, including the answers.

We will go through the names as I called them out, and first to testify, of course, will be Dr. Terry Maple from Atlanta, Georgia, head of Zoo Atlanta.

I recognize that the gentleman from California, Mr. Dooley, just walked in, but he is too late to make an opening statement. He will have to do it on his own time a little bit later on.

Dr. Maple.

#### **STATEMENT OF DR. TERRY MAPLE, ZOO ATLANTA, ATLANTA, GEORGIA**

Mr. MAPLE. Thank you. I am very honored to be here, and I appreciate the opportunity to participate and I am very grateful, too,



for the hard work that has brought this committee together. Many people have worked long hours, and it is wonderful to be a part of this process.

By way of introduction, I was born in Los Angeles and raised in the foothills of San Diego County. I was educated in California from kindergarten to my doctoral dissertation. I spent the last 20 years in the south.

I grew up close to nature at the perimeter of our city, hiking daily within a complex, hillside ecosystem which harbored a multitude of marvelous living things. I fancied horned lizards, brown squirrels, and hummingbirds, and although my older brother who is now a solid state physicist was a hunter and a taxidermist, I was quite satisfied just to look at animals.

As a boy, I dreamed of travel and exploration. No one had to teach me to appreciate nonhuman life forms. They were intrinsically interesting to each and every one of my peers who shared those hills with me.

We could not then envision a world without such creatures, but we knew all about extinction. At a limestone hillside known as Fossil Canyon, we encountered extinct life forms nearly every day, and years later, paleontologists recovered the bones of many bizarre vertebrates which inhabited Southern California 13 million to 16 million years ago.

Fossil Canyon was thoroughly excavated by serious scientists, but it had been discovered by kids like me. My world was further enriched by family visits to the world famous San Diego Zoo, an educational resource that profoundly affected me. I am a westerner by birth and experience. I grew up expecting to share space with wildlife.

My doctoral training is in comparative and environmental psychology. I have been a college professor at the University of California at Davis, at Emory University and Georgia Tech for 20 years. My research has led me into the allied specialties of ecology, primatology, and psychobiology.

At Georgia Tech, I was promoted to full professor in 1984 and soon after, accepted a position as director of the Atlanta Zoo. In that capacity, I currently operate a \$10 million business devoted to conservation, education, and science, and the management of a collection of nearly 1,000 living animals.

Zoo Atlanta is supported by the leading corporations, foundations, and individuals in our metropolitan region and beyond. During the past two years against significant Olympic competition, we raised nearly \$9 million with campaign leadership from executives at Georgia Pacific and Georgia Power Company.

Through contact with these and other successful business leaders, I discovered just how green industry is becoming, and I am sorry to say that I think maybe it is a little greener than the Republican Party right now.

They are green for good reason. Simply stated, protecting our natural resources is a good business practice. Now, by temperament and I think by training, I am qualified to be here today to talk to you about the Endangered Species Act. I am by nature a reasonable and rational person like you. I run a business based on conservative business principles. For 12 years, I have been respon-



sible for balancing a budget and meeting a payroll. My mentors are among the most successful business leaders in Atlanta.

I have examined the history and the context of the Endangered Species Act, and as a set of regulations, it affects the way I do my business.

The behavior of zoo biologists is regulated. To import an endangered orangutan for example, Zoo Atlanta must submit appropriate paperwork, which is evaluated by Interior and commentary comes forward from outside agencies including zoo conservation bodies. It is often a slow and cumbersome process, but my peers in the American Association of Zoos and Aquariums are unanimous in seeking reauthorization of the act.

In offering their support, many of them also acknowledge a need for some skillful tinkering. It was Leopold who said that the first step of intelligent tinkering is to "save all the pieces."

Understanding the full significance of the Endangered Species Act as a symbol of our nation's commitment to conservation, zoo and aquarium biologists have a point of view in this national debate.

Our constituency is more than 150 million visitors in America alone who consistently tell us that they want to protect wildlife through laws such as the Endangered Species Act. Our visitors also tell us that they expect the nation's zoos and aquariums to play a role, a significant role, in a balanced approach to conservation through captive breeding, protection of ecosystems, conservation education, and high quality animal management.

We are committed to effective conservation measures. A rational, responsible Endangered Species Act is a cornerstone of this approach.

At this hearing today, we will hear about deficiencies in the enforcement of the act. We will hear about deficiencies in the act itself. We can remedy these deficiencies, but we've got to be careful not to abandon the basics of this act.

In his book, the *Renewal of America*, Speaker of the House Newt Gingrich reminds us that we can't effectively protect endangered species if people are penalized when the creatures are discovered on their land. This is an irrational approach to conservation, but Speaker Gingrich does not advocate an outright repeal of the act. Instead, he expects us to improve upon it, and he has told me that time and time again. He has long advocated "win-win" solutions, like many of you.

We should expect to deliver to America nothing less than endangered species legislation that works for animals and people, too. To accomplish this, we need two political parties, at least two, equally committed to a sincere and sustainable stewardship of our natural resources. We have got to look long-term and we must foster a new spirit of cooperation, and we must vigorously protect our biotic investment for future generations of Americans to utilize and enjoy.

Speaker Gingrich has observed in his book, "A planet with elephants, blue whales, and a wide variety of birds and butterflies plus beauty such as Yellowstone Park and the Grand Canyon is far more desirable than one that is covered with parking lots and high rise apartments. Our quality of life," he said, "is much better if we

maintain wilderness areas, national parks, nature preserves, migratory bird paths, and similar facilities."

The esteemed conservation biologist, E. O. Wilson, framed the problem in another way. He has written, "The more we know of other forms of life, the more we enjoy and respect ourselves. Humanity is exalted not because we are so far above other living creatures—"

The CHAIRMAN. Doctor, can I inquire how much further you have?

Mr. MAPLE. Yes, sir. ". . . because knowing them well, elevates the very concept of life."

During the past year, the Endangered Species Act has been under some attack. I have talked candidly to wildlife professionals who have already assimilated many of the constructive features of this criticism, and I am happy to say that I know of no serious supporter of the act who hasn't acknowledged the need to reform it, but we have now got to be prepared to locate a common topography between environmentalists and their critics.

This will be attainable when rational, responsible professionals agree to work diligently on this problem together, and I encounter people all over this country and particularly in the Republican party, moderate and conservative, who want to build a coalition of support for responsible, innovative environmental leadership. I think also that the effort by Congressman Jim Saxton to bring together leaders of industry, leaders of the environment and our political leaders is a very important effort. I would like to see that continued.

Now, for conservatives or moderates, and I will close here just in a moment, there are plenty of good reasons to support a rational and responsible Endangered Species Act. Like any good business, we should study what our customers want. Polling data from Republican and Democratic sources indicate that the American people overwhelmingly believe that wildlife protection is highly desirable.

If we need to change something like the ESA and certainly, there is a need for some change, then we have got to do it carefully and very thoughtfully. The act is a quality of life issue, in my opinion. People want wildlife in their lives, and people realize that wildlife and wilderness is an emotionally, intellectually and spiritually uplifting thing.

It is a fragile resource, but it is also the utilitarian resource. Dr. Thomas Eisner, for example, has estimated the value of many plants used in medicines; and he laments the fact that if we lose through massive plant extinctions so much of this biodiversity, it will deprive future generations of the medicines of the future.

Now, we need to recognize that——

The CHAIRMAN. Doctor, you have gone ten minutes, and I don't want to cut it, but cut it pretty short, will you please? I have four other witnesses.

Mr. MAPLE. All right. Let me just wrap up here. I will give you one last statement, if I might.

The CHAIRMAN. Next to politicians, professors have a habit of doing this.

Mr. MAPLE. I know, but this is just a ten-minute Rotary talk. I usually go an hour.



I spent a lot of my career refereeing warring factions, and I just wanted to tell you that we had a conference in Atlanta in 1993. We brought together zoological leaders and their critics from the animal welfare world. We got together; we found common ground.

We wrote a book about it, *Ethics on the Ark*, and I would like to see something accomplished where we can get together with people on all sides of this issue and find common ground. I know we can do it, and I hope, sir, that you will make this happen this year.

The CHAIRMAN. Thank you, Doctor. The only objection I have to your testimony, and I think it is excellent testimony, was with reference to the Republican Party.

I can tell you the direction the Democratic Party was going. The outcry raged of people being dominated, dictatorial by agencies was a shame to this government. In the face of our constitution, no government has a right to do what has been done in the last four years, and I say that because under two administrations that is what I have been trying to do under my bill.

If you read my bill very carefully, it can be fine tuned.

Mr. MAPLE. Exactly.

The CHAIRMAN. But what has happened here, there is an outcry, and the strategic mistake I made was not repealing, but instead trying to take a moderate approach. I voted for the ESA.

I tried to do the responsible thing along with Mr. Pombo. There is some indication by certain people that think that people don't count, and if you don't have the people's support for the ESA, ESA will perish.

For those in the audience that don't think people are important, people can destroy what is cherished in our hearts if they finally get so fed up with our government, and right now, they are close to it.

Cindy, you are next.

#### STATEMENT OF CINDY DOMENIGONI

Ms. DOMENIGONI. Thank you, Mr. Chairman and distinguished members of Congress for allowing me to appear today. I also want to thank you for allowing Mr. Rowe to accompany me to provide additional information.

Our family owns a 2,500-acre cattle ranch and grain farm in Winchester, California. Our son is the fifth generation to work the land, and my husband's ancestors settled this land over 100 years ago.

I come before you today with a rising amount of frustration and a healthy amount of anger. Our farm has been seriously impacted by the endangered listing of the Stephens' kangaroo rat.

We have been stopped from farming parts of our land and now, after simply standing up and telling our story, we have unjustly been attacked and essentially called liars.

I will briefly outline the impacts of the Endangered Species Act on our farm operation and our lives, and then speak to the government's added insults to our injury.

In 1990, without our knowledge or consent, over 1,600 acres of our ranch were placed in a reserve study area as part of a habitat conservation for the Stephens' kangaroo rat under Section 10[a] of the Endangered Species Act. We were later prohibited from farm-

ing about 800 acres of our farm because of the presence of the K-rat.

As a result of not being able to farm that property, we incurred over \$400,000 in lost income and direct cost because of the impact of the Endangered Species Act. After a disastrous fire in 1993, I was interviewed as part of the GAO investigation into the effects the ESA prohibitions had on the damage caused by the fire. We had hoped that the GAO would take a fair, objective look at the information and report the truth of what happened in Riverside County.

Last year, I was shocked to learn that I was targeted in a smear campaign waged by the U.S. Fish and Wildlife Service. We received a document titled *Facts about the Endangered Species Act*. One whole chapter in it is devoted to casting me and other Endangered Species Act victims who have had the courage to speak out in public as liars.

When we sought to find out the sources of the information, it took a formal Freedom of Information Act request, yet their responses so far have been woefully inadequate.

First, the service nearly drives us out of business with its prohibition stopping us from farming our land, then it nearly costs us our lives and our home and our cattle by forcing us to abandon safe fire prevention practices, then they attack us simply for telling what happened. Then to top it all off, the Service, while knowing the true facts of the matter, attempts to discredit my family and me, all the while using my tax dollars to accomplish this.

The Service's response falsely suggest that I inflated the acreage my family was prohibited from farming, then they follow with the statement that the property was allowed to be farmed again, totally omitting the fact that the land was idle for three years due to their prohibition.

In 1992, we received two letters from our neighbor, Michael Rowe. He was asking us to remove the vegetation and brush that had built up because we couldn't farm. He legitimately feared that should a fire come, he would be in great danger of losing his home from the amount of fuel that had built up so close to his property. At that time, the Service prohibited us from disking the fire break.

After the fire, my husband and I examined the land ourselves and found no evidence of K-rats. We then sought to have the service re-examine the land and tell us if it would be all right for us to farm it again since there were no K-rats left on the property.

After his examination and his verbal go-ahead to us, the Service biologist was attributed in our paper as saying it wasn't the fire that caused the destruction of the K-rats and their habitat. Rather, while we were under orders not to farm the land by the Service, the brush and weeds in the field had grown too thick for the K-rats' preference, and they had simply left the area long before the fire occurred.

This shows that in their infinite wisdom, the agencies charged with protecting this species had actually caused an area that had been used for farming and for habitat for over 100 years to be both unsuitable for the K-rats and unproductive for us.

Included with my testimony are two maps depicting the habitat protection area; our property, including the areas we were not al-



lowed to farm; Mike Rowe's residence; and the origin of the fire and its direction of travel that first night and the 29 homes that were destroyed. I request that copies of this be entered into the record.

The CHAIRMAN. Without objection.

Ms. DOMENIGONI. Thank you. Because he was fortunate enough to have warning and a ready tractor, Michael Rowe saved his house by cutting the fence between our properties and disking a fire break before the fire made its way to his home. I have also brought photographs of the area as it looked this past December.

Because of the fire and the Service's newly found flexibility that allows us to disk fire breaks, you will see good size disked fire breaks in these photos of our property and Mr. Rowe's property.

Another photo shows our farm property and some vacant property owned by the Riverside County Conservation Agency as part of the Stephens' kangaroo rat reserve area which also burned in the fire. In just two short years, the growth of brush and the amount of dead, flammable vegetation is already enormous. You can just imagine what the area that we are now able to farm was like after having more than five years' growth of brush on it.

It is incumbent upon Congress to investigate the abuses caused by the publication of this document, *Facts about the Endangered Species Act*. Why isn't it attributed to the Department or the Service? Who wrote it? Why aren't there contact persons mentioned in the rest of the story section of the document? Why did the service make up phony allegations in order to easily refute them, thus casting suspicion on the whole of the story? Why did the Service ignore the true facts when it had them in its possession?

I am just one of those people who has been assassinated by the mistruths published in this document. Michael Rowe, accompanying me, is another. Ms. Rector, also testifying, is another.

How many more people discussed in this document have been so seriously abused and mischaracterized? This document is nothing more than a thinly veiled effort to undermine the sensible reforms and redirection you are attempting to achieve in re-authorizing the Endangered Species Act for both the species it seeks to protect and the people it affects every day.

It is also an example of one of the many ways that the U.S. Fish and Wildlife Service is abusing the broad authority given it under the act.

We urge you to stay the course in reforming the act, to rein in the abuses, and give strict guidance to the agencies responsible for enforcing this law. You must calm the fears of landowners. What landowners now have are both the Federal agents and the presence of the species that cause landowners to have to deal with them. That is why the only way the Endangered Species Act will ever change from a disaster and a failure to a true success story.

Thank you so much.

[Statement of Cindy Domenigoni may be found at end of hearing.]

The CHAIRMAN. Thank you, Cindy, and one thing I can assure you, that at the next hearing, we are going to have the villainous Fish and Wildlife Service before us, and I say that without reservation, that there are certain personnel within Fish and Wildlife who



have far exceeded their authority, not only in your area, but in other areas as far as their conduct toward the people they serve.

This is an agency under the Department of the Interior under Secretary Babbitt that has gone awry, and it is time that they have to answer. They have not been reviewed, they have not been looked at, nor have they been audited and they will be.

Margaret, you are next.

### STATEMENT OF MARGARET RECTOR

Ms. RECTOR. Chairman Young, thank you and your committee for inviting me to come and speak today.

I am Margaret Rector from Austin, Texas. I own a 15-acre tract of land just outside the city of Austin. This land is on a major roadway and is surrounded by property being rapidly developed for commercial use.

I bought this land in 1973 as an investment for my retirement years. In 1984, I sold this land, but in 1990, I had to repossess it due to the nonpayment of my note. At that time, the U.S. Fish and Wildlife Service had just declared this area as habitat for the golden-cheeked warbler.

The previous owners did not see fit to complete their plans to build an office park. This was due to the demands that they would have to meet under the Endangered Species Act and also the slump in the economy.

In 1990, my land was back on the market to sell. Although there were many inquiries from investors and builders, it has been virtually impossible to find a buyer for a tract of land that has been labelled habitat of the golden-cheeked warbler.

During the past six years, I have had only one offer to buy my land. In May, 1995, I had an earnest money contract with a private businessman. He wanted to build some dry storage units and needed to use only two or three acres of the tract. When they contacted the U.S. Fish and Wildlife, they were told that the mitigation fee would be \$34,000. They would be required to get a 10[a] permit, an aerial survey, and other expenses which this buyer determined to be too expensive and time consuming. The contract was canceled.

Currently, I have listed the land with Duncan Commercial Properties. Mr. Bill Ward, who represents that firm, is attending this meeting. He has tried to find a buyer for over five months, and there has not been one offer. He has told me that he is getting lots of inquiries, but when prospects are told about the requirements to develop under the Endangered Species Act, they are no longer interested.

I have never intended to develop this property myself. My plan has always been to sell this land to some other persons who would be able to develop it.

Mr. Ward and other real estate brokers have told me many instances of how the Endangered Species Act is adversely affecting real estate sales in this area.

The Balcones Canyonlands Conservation Plan was designed to benefit small landowners. As of this date, the plan has not been adopted or funded, and its future is very uncertain. This plan would have required a certificate fee of \$5,500 per acre for develop-

ment in my case. This plan was objectionable to we small land-owners, as we had no part in the formation of this plan. It was going to benefit the multimillion dollar corporations.

My land has been devalued on the tax rolls from \$991,862 in 1989 to \$30,360 in 1995. I am convinced this reduction is due to the bird situation and not the economy. For the past three years, Austin has experienced a tremendous boom in real estate.

In my most recent letter from U.S. Fish and Wildlife dated October 27, 1995, they state, and I quote, "our position that alteration of habitat could result in take and our recommendation that authorization under the Endangered Species Act be pursued prior to any vegetation alteration or construction activity remains unchanged."

So, it has been almost six years that this land has been in limbo. My situation has not changed, and all I can do is to continue to pay taxes on land that has been made practically worthless by the ESA.

The Endangered Species Act must be changed. The small land-owner must be given some consideration for economic hardship. Property rights guaranteed by the Fifth Amendment of the Constitution are being denied us.

I hope your committee will be successful in getting legislation through Congress that will solve this dilemma. Thank you for having me here.

[Attachments to statement of Margaret Rector may be found at end of hearing.]

The CHAIRMAN. Thank you, Margaret. For the committee and the witnesses, we have two votes. I am going to recess the hearing until 15 minutes after 12:00, and to the two remaining witnesses, I apologize, but you are now free to go to the rest room or whatever you want to do, and we will be back here at 15 minutes after 12:00.

[Recess.]

The CHAIRMAN. I do apologize for the interruption. It is a classic example of our government in action.

The next witness is Lloyd A. Good, Jr., Lower Sugarloaf Key, Florida. Mr. Good, you are up.

#### STATEMENT OF LLOYD A. GOOD, JR.

Mr. GOOD. Mr. Chairman, thank you very much for inviting me to testify before this committee.

May it please the committee and its members that are here now, my name is Lloyd Good. I reside in the Lower Sugarloaf Key which is approximately 13 miles from Key West, Florida.

My property that is affected by the Endangered Species Act is in fact a 40-acre piece of property which is situated on Lower Sugarloaf Key right in the middle of other developed property. It is not isolated but surrounded by other developed property.

I purchased this property in 1973 at an adjusted cost of approximately \$100,000. I spent another \$100,000 on it getting the various torturous permits that are necessary to develop in a fragile environmental area such as the Florida Keys. I have obtained throughout the years at least three Corps permit for the development of this property into a 55-unit residential subdivision. I have obtained all the necessary county permits to do it. I have also obtained the



necessary Department of Environment permits from the state of Florida. I have spent approximately another \$100,000 in that process.

My first initiation to the Endangered Species Act occurred when two species, first the Lower Keys marsh bunny, which is an admitted subspecies of the regular marsh bunny, was listed as an endangered species. The next endangered species to find its way to my chagrin was the silver rice rat.

Both these species, the Fish and Wildlife now claim if not occupying property, would like to. As a result of Fish and Wildlife's determination of jeopardy, the Corps was unable to grant me a lesser environmental impact permit that was required by one other state agency and refused to extend my 55-lot permit, thereby rendering the property worthless.

I was fortunate enough to hire able counsel to begin a takings claim in the Court of Claims, but I have spent already on that case and God knows how much more I am going to spend, at least \$100,000.

My situation is fortunate for me, but I can't imagine how any other private citizen in the Lower Keys that is likewise affected by any endangered species could afford the type of representation necessary to have their property rights adjudged in an appropriate manner.

The Endangered Species Act must, if it is going to continue, contain some provision for the protection of private property rights. For those individuals that can neither afford nor have the wherewithal or the intelligence or even the educational background to protect themselves against these agencies.

In my particular case, when I purchased the property in '73, there was no Endangered Species Act. The endangered species that were found on the property were not even listed until well after all the permits had been obtained.

I would like to read into the record how the Fish and Wildlife found jeopardy for the silver rice rat, but first of all, before I do, let me state this. As a young boy, I raised rabbits, and a rabbit has a period of gestation of 28 days. To get rabbits out of endangerment, you just need two, and within four years, you will be up to your you-know-what in rabbits.

As far as rats go, I am not suggesting that a rat cannot be an endangered species, and I am not suggesting that maybe they should be, but I am certainly suggesting that no one ever considered when this act was passed that these subspecies and these other exotic species would ever curtail the development of private property.

It has gone too far. It has also gone to a point where nobody, no private citizen, unless he is endowed with substantial money and a lot of time, can ever go through the horrendous task of getting his rights finally before a forum, and I am not through the forum yet.

I have been two years in the lawsuit. I am probably looking at another year and another \$100,000. In the meantime, I have got a piece of property I can't use, because it is the habitat of the marsh bunny and the silver rice rat.

Let me read to you the Fish and Wildlife jeopardy opinion as it applies to the silver rice rat—as it applies to my property and the silver rice rat. “Extensive trapping was not conducted in the project area on Sugarloaf Key when Mrs. Goodyear conducted her survey. However, silver rice rats were found in the Saddlebunch Keys near the lower end of Sugarloaf, and Mrs. Goodyear suspects the subspecies is present on Sugarloaf Key. The project site contains appropriate habitat for the subspecies and is across the road from land that is also potential habitat. The Service believes,” not they think, they believe, “that the silver rice rat inhabits the subject property because the tract’s vegetative component is of suitable quality for supporting the subspecies. The project as proposed would eliminate the valuable habitat of the silver rice rat. The Service believes that any loss of remaining habitat would be detrimental to the subspecies. In view of the appropriate habitat characteristics and the lack of information indication that the site is not occupied by the silver rice rats, the Service concludes these projects are likely to jeopardize the continued existence of the silver rice rat.”

What they are saying is, we don’t know that if he is there, but if he does come, he would like it. I don’t have an advance reservation for silver rice rats, but certainly that system has been used to eliminate any use of this property.

Now, standing alone, this determination, if there wasn’t another facet to this, would probably put me in a terrible position to try to get compensation, but because I had held Corps permits for the development of the wetlands for this property, the Corps denied me the use of these permits, because it could not under 401[b] guidelines and did not comply with the Endangered Species Act. Therefore, the Corps denied the permit that I applied for to utilize the wetlands and waterfront and appanages and refused to extend the permits that had already existed for over 12 years on this property.

What happened here was frankly this. The Corps said, look, we might not agree with this, but we are bound by the determination of Fish and Wildlife. Your property is habitat. Now, the mere designation of this property as habitat has an effect of destroying all viable use.

You can send people up here in Washington who can sit in their ivory towers and say, hey, look, let us find some way we can use the property once it has got an endangered species on it. That just doesn’t fly. You have got citizen suit provisions in the Endangered Species Act, and if you are in an environmentally sensitive area, and I have lived in this area for 23 years, you can well bet that all of the neighbors that don’t want this property developed will bring suit. Nobody in their right mind would undertake to develop this property with these clouds hanging.

Therefore, the designation of this property as the habitat for these two species has in effect rendered it valueless. Real estate brokers won’t touch it. Other developers won’t touch it. Bankers won’t even look at it. Mortgage brokers aren’t interested. It is dead.

I am more fortunate than most. I listened to the horror story of Margaret Rector and also Cindy, but what about the little guy that has bought a lot and paid \$5,000 for it? How does he justify entering into this morass to try to get his property? He can’t; he can’t



afford it. If he brought a suit, it would cost him tens of thousands of dollars to recoup his \$5,000.

Unless there is some provision in the reauthorization of this act providing protection of property rights, the act is a fraud on the American public. It can't go forward without some protection for the little guy.

I am fortunate in one respect. I can weather this storm, and I am fighting the Federal Government. I have brought suit, but how about the people that can't? What are you going to do about them?

I have taken it to court. I am a lawyer. I practiced law for 40 years. I hired lawyers, because if I represent myself in this, you know the statement, I would have a fool for a client.

But what are you going to do about the little guy, and what are you going to do about the extension of this act to the myriad of subspecies that it has been extended to?

I think the most ludicrous thing we have heard today is the kangaroo rat, the silver rice rat, the marsh bunny. Believe me, if this marsh bunny, Lower Keys marsh bunny disappeared off the face of the earth, there are thousands and thousands of bunnies that would step in and take its place.

The CHAIRMAN. Lloyd, I appreciate this, but how soon can you wrap—

Mr. GOOD. I'm done.

[Statement of Lloyd Good may be found at end of hearing.]

The CHAIRMAN. Thank you very much. The next witness is Faith Campbell, of Washington, D.C.

#### STATEMENT OF FAITH CAMPBELL

Ms. CAMPBELL. Thank you, Mr. Chairman. I do appreciate the opportunity to be here to discuss the implementation of the Endangered Species Act as it applies to plant species.

My name is Faith Campbell, and I have spent 16 years following implementation of the act primarily with regard to plants.

At least 200 species of plants have become extinct in the United States since the early 1800's and the decline continues. About 700 species are now either listed or proposed for listing and held up in the moratorium, yet plants have received little attention or assistance from the implementing agencies or from Congress.

Several provisions of the act are different for plants than they are for animals. The act does not allow listing of geographically separate populations. This stricture has prevented, for example, listing of the Montana populations of whitebark pine.

The Section 9 taking prohibition does not apply to plants. The landowners may destroy listed plants with impunity. Section 9 does prohibit interstate commerce in the listed plants, collecting without permission of the landowner or collecting or vandalizing listed plants on Federal lands. We regard these provisions—or I regard these provisions as protecting the rights of the landowner in these cases.

Plants are included in habitat conservation plans because of a requirement for a Section 7 consultation. The result is that when the lack of protection under Section 9 is combined with the inclusion in HCPs, the landowners have a perverse incentive to destroy any



listed plants on their property before initiating negotiation of an HCP.

Problems in the act have been compounded by reluctant implementation of the act for plants. The first manifestation of this is the very slow listing process. Despite the desperate plight of many of the more or less 1,800 plant species that were initially proposed by the Smithsonian in its report in 1977, listing has proceeded very slowly with a pace of less than one a month for six out of the 20 years during that period.

At present, there are 526 plants on the list out of a total of 960 U.S. species, so for the last two or three years, they have represented a majority of the U.S. species on the list.

Even after they are listed, they are often neglected. Preparation of recovery plans is lagged for plants. Only 40 percent of plant species have recovery plans compared to more than 60 percent of all listed animal species.

Worse, recovery efforts have been hampered by a chronic deprivation of funds. In 1990, plants made up 41 percent of the list, but they received eight percent of the Fish and Wildlife Service's recovery funds, and only three percent of Section 6 grants to the states. At that time, approximately 70 plant species or a quarter of those on the list received no Fish and Wildlife funding.

While I was unable in the day and a half available to me before coming here today to obtain more recent comprehensive figures, there is no reason to think the situation has improved any.

In 1993, I was able to learn, the Pima pineapple cactus was the plant receiving the most recovery funding, \$392,000. That placed it 67th on the list. The Pima cactus received 1/45th of the money given to the most expensive animal recovery effort, that for the Snake River spring-summer chinook, which received \$18 million.

Recovery for plant species can often be less expensive than it is for wide-ranging animals; however, all plants that are on the list would benefit from some attention and some will require extensive research, propagation, and aggressive protection programs.

Furthermore, although plants receive full protection only on Federal lands, I am aware of no national wildlife refuges that have been acquired to protect plants.

I would like to add that there is a major threat out there that is not being addressed, and that is the impact of invasions by exotic species. All of the approximately 200 plant species in Hawaii are threatened by exotic species. Dozens of species in Florida have been documented as threatened by them, and I am aware of individual instances in California, Idaho, Virginia, and other states.

Endangered animals are also harmed. If the *Melaleuca* continues to expand across the Everglades ecosystem in Florida, it will destroy the habitat of the endangered snail kite.

The grizzly bear in Montana is facing a double threat to its food supply. Whitebark pine, more than 90 percent of the trees in Glacier National Park and the Bob Marshall Wilderness have died because of white pine blister rust. Whitebark pine provides a highly nutritious seed that is very important to the grizzly and other wildlife of the upper elevations. In lower elevations, invading noxious weeds are the problem.

I have a couple other examples of tree species. The butternut throughout the east and the firs, the Fraser fir, and another endemic to high peaks in the southern Appalachians, Tennessee-North Carolina border. Nothing is being done about these species under the act; they are not even candidates, really.

Despite Executive Order 11987 instructing executive agencies to restrict imports of specific exotic species, the harmful wildlife provisions of the Lacey Act and Federal and state noxious weed acts, nothing effective is being done for biodiversity to protect it from its threats.

I will stop here. Thank you.

[Statement of Faith Campbell may be found at end of hearing.]

The CHAIRMAN. Thank you for the testimony. I appreciate it very much, Faith.

I have a series of questions and I am going to ask Mr. Shadegg to take the chair, and we will go through the hearing and questions.

Dr. Maple, you heard the testimony of the three people at the table. How would you solve their problems under the existing act or don't you think it should be solved?

Mr. MAPLE. I think it should be solved, absolutely. I find the testimony compelling and we had a little conversation here during the break, and I don't think these things should happen.

I don't think anybody should interpret my support for wildlife as being in any way in opposition to my support for people. We have got to find a way in this country to take legislation like this and make it work for both, and I believe we can find a way to do that.

The CHAIRMAN. Have you read my bill?

Mr. MAPLE. Yes.

The CHAIRMAN. OK. In my bill, one of the things we require is sound biological information before a species is put on the list.

Mr. MAPLE. I agree with that.

The CHAIRMAN. That is not being done today, regardless of what any agency says. For anybody to say the kangaroo rat in fact is endangered because of the activity that Cindy was doing has got to be about as dumb as a fence post, because in reality, those rats were there because of her activity.

In my bill, we would reward her for in fact protecting the endangered species. Under the present determination, she is being penalized.

Don't you agree that there is a way she should be rewarded and still conduct her activities as long as it doesn't decrease the species?

Mr. MAPLE. Absolutely, but I think these issues have to be put on the table. I think——

The CHAIRMAN. Well, we are doing that.

Mr. MAPLE. I don't——

The CHAIRMAN. We are. We are doing it. My problem is, every time I say something like that, the environmentalists, say, oh, my God, you are gutting the ESA, and that is our biggest problem right now.

There is purity in this movement that makes no sense at all, and somehow, what happened to Cindy and Margaret and Lloyd has to be addressed, because there are thousands and thousands, as Lloyd



has said, of the small landowners now that are being told that he is the villain instead of the savior of the endangered species.

Mr. MAPLE. Well, I would like to broker a discussion about that today. I think one of the problems is that we do have some points of view that are so divergent on the issue of compensation, for example, that people will not talk about it or negotiate. Until you can put something like that on the table and really understand, we won't make progress.

The CHAIRMAN. We will make progress, but we won't renew the act, unless we reform that act or I won't move a bill. It is that simple. That is not a threat; that is a promise.

I am suggesting respectfully in the cases—under our Constitution, the taking provision is sacred and the fact that for the national good we protect a species—I hope you don't disagree with this, for the good of all and the species, that person somehow has to be compensated. But more than that, in fact, his activity is not destroying the species.

If it is not, then he should be allowed, not at the discretion of an agency, but allowed by the law to continue his activities.

Do you disagree with that?

Mr. MAPLE. Well, my feeling is that, as I said before, that the people that are having difficulty with this thing as these stories have indicated, deserve full consideration and I don't think these things should happen. I don't understand why they happened.

The CHAIRMAN. Because the agency and this government has gone out of whack. They think they are God. We passed a law in '73. It never intended, as the gentleman, Lloyd, has said, never intended that, but through their little regulatory law, they have never been reviewed, and they decided they knew what was best. We have to do it through law, so they won't regress.

Mr. MAPLE. But I don't think we have found a way to do it yet, but I think we need to.

The CHAIRMAN. Now, along those lines, Cindy, in your testimony, what was the attitude of the agency's. I have read that stuff, and by the way, we will have a hearing on this stuff that just came out.

How did they address you and what justification did they have on the protection of the rat? May I ask you, are there any other rats in California, any other kangaroo rats?

Ms. DOMENIGONI. There are several different subspecies of kangaroo rats in California.

The CHAIRMAN. Are you the only one that had the one kangaroo rat that was supposed to be endangered, or did other property have kangaroo rats?

Ms. DOMENIGONI. No, there are others.

The CHAIRMAN. I just want to stress it, and it goes back to what Margaret has said about the golden cheeked warblers. Are there other golden cheeked warblers in Texas?

Ms. RECTOR. I would imagine, yes.

The CHAIRMAN. And again, it goes back exactly to what my problem is, an agency has no biological background, nothing to lose, lawyers to pay for the taxpayer. In fact, they can go into a private property and take their land by devaluing it.

In the case of Margaret, she lost over \$800,000 or \$900,000. Some people say that prevents development. In that case, she should have been compensated.

Cindy's case was a disaster because in reality, they destroyed, if my information is correct, the rat habitat before the fire. In fact, it left the area before the fire because it was overgrown. Is that correct?

Ms. DOMENIGONI. That is correct, and it is still pretty devastated out there.

The CHAIRMAN. Are you able now to farm the area that was devastated?

Ms. DOMENIGONI. Yes, we are.

The CHAIRMAN. How much money—you estimated in your testimony that you lost \$400,000?

Ms. DOMENIGONI. Yes.

The CHAIRMAN. Did you use any legal advisors?

Ms. DOMENIGONI. Yes, we did.

The CHAIRMAN. How much did you lose on that?

Ms. DOMENIGONI. Part of that \$400,000 is legal expense.

The CHAIRMAN. And what is the answer from the Fish and Wildlife to you? Have they apologized, have they said anything, or are they just sticking by their guns that they are the government and they were right?

Ms. DOMENIGONI. They have still been sticking by their guns. In fact——

The CHAIRMAN. Still sticking. Go ahead.

Ms. DOMENIGONI [continuing]. when the biologists came out to allow us to go back in and farm after the fires, we had requested that we get that in writing, and to today, we still do not have permission in writing from the Fish and Wildlife Service on our farming activities.

Every year we go in and disk. We do it with the threat that they may come back and stop us at any time.

The CHAIRMAN. But they said you could verbally.

Ms. DOMENIGONI. Yes.

The CHAIRMAN. Now, this is another example of our government in action. No reason to stop you to begin with, and now that you have had the fire, they say you can do it, but we won't put it in writing because we might want to stop you later.

This is why the bill has to be amended, it has to be changed. To me, again, I am the only person sitting on this committee that voted for this legislation in 1973, and to restate what I said, we had two hearings in 1973. Nobody objected to it. It was an attempt in fact to try to protect the species. No one envisioned—by the way, Cindy, all the plants and things that are being discussed, no one envisioned all the subspecies. That is not what was told to us, and yet the agencies have taken this thing and run with it like you can't believe.

By the way, Doctor, I want to ask a question before I turn this over to Mr. Shadegg. Do you believe that all species can in fact be maintained forever and ever regardless of what man does?

Mr. MAPLE. Well, of course not.



The CHAIRMAN. There have been how many species, do you think, that have been lost in the past? You talk about your—or your bill that you support.

Mr. MAPLE. Well, that is debatable, because a lot of people think we are in a period of extinction that rivals the greatest periods of history, but it is debatable.

The important thing is that a lot of the extinctions that are expected will be the result, we think, of competition for scarce resources, and we are not going to remedy every situation out there by legislation.

The CHAIRMAN. Are there other species being developed today?

Mr. MAPLE. Are there what, now?

The CHAIRMAN. Other species being developed today.

Mr. MAPLE. Do you mean through biotechnology?

The CHAIRMAN. No, I mean through nature. Are there other evolving species to your knowledge?

Mr. MAPLE. Speciation is occurring. Organisms are evolving, changing, sure.

The CHAIRMAN. What I am stressing here, the purists that I call in this movement suggest that man could stop still and nothing will ever occur again or change. Now, you are——

Mr. MAPLE. Nobody believes that.

The CHAIRMAN. Pardon?

Mr. MAPLE. I don't think anybody really believes that, do you?

The CHAIRMAN. I have had them testify to that. In fact, they want to preserve, and I use the word preserve; preserve a tree, for instance.

What is wrong with the word preserve a tree? Doctor, what is wrong with it?

Mr. MAPLE. You tell me. Are you saying that you——

The CHAIRMAN. No, I am suggesting, what is wrong with the term preserve a tree? What does a tree do that you do or I will do?

Mr. MAPLE. I am not quite sure of that. I am not sure where you are going with this.

The CHAIRMAN. You will die. I hear people talk to me about preserving a tree or preserving a species or preserving and not going forward, and if you really look at what happened in the past, what has occurred to all the animals and all the species through the evolution of time, nothing stands still. The one thing constant about nature is change. Is that true?

Mr. MAPLE. Absolutely.

The CHAIRMAN. Then we agree on that. We will use your testimony; we will use your information.

What we are trying to reach is get beyond the polarized position that we don't need a bill, and we have those, believe me, and those that say don't touch the bill; it is working perfectly well today.

What we have to figure out is how we take care of Cindy's problem and Margaret's problem and Lloyd's problem, recognize that species have a role to play with mankind, but if you don't take care of their problem, the species will be destroyed, because man eventually will revolt against the domineering factor of an overbearing government that in fact is destroying the meaning of our Constitution and well-being of our people.

For those that don't agree with me, just sit tight, and you will see it happen if we don't somehow reach a decision on how we can solve the problem.

Mr. Shadegg, where are you? Mr. Saxton.

Mr. SAXTON. I would just like first of all to say thank you all for traveling some distances to come and share your experiences with us, and Dr. Maple, welcome back.

Mr. MAPLE. Thanks.

Mr. SAXTON. This is the second or third time you have been here to testify on this series of issues.

Let me say that I don't think I come from a position on this issue where my mind is made up. Let me just say, the district I represent is the southern part of New Jersey.

Some of you may have heard about the New Jersey pine barrens. The New Jersey Pine Barrens is about 1 million acres and much of it is in my district. A little creature lives there called the Pine Barrens tree frog, and the Federal Government, a few years ago, I guess it was 1975 or '76, decided that the water quality in the Pine Barrens was pristine and that the little tree frog ought to be saved.

The Federal Government passed a law which tasked the state of New Jersey to find a way to accomplish those dual goals, save the tree frog and the plants, I might add. I am sure there were some ferns that were endangered also which don't come to my mind, so Faith, you are absolutely right with your contention that we don't pay as much attention to plants as we do animals.

Anyway, this 1 million acres which makes up seven of the 21 counties in New Jersey was set aside as the Pine Lands National Preserve, and because it has endangered species and because it is now regulated by a local authority which regulates development in those seven counties, almost nothing can happen there.

Just as Margaret can't develop her land, the people who live and own part of that 1 million acres can't develop theirs. Maybe that is a slight overstatement, because there is some room for relief in the plan.

Just as you all have lost value and gone through a lot of aggravation with your land, the people who own the 1 million acres that I represent, some of them acre lots, some of them 15-acre parcels, some of them hundreds, some of them thousands, all have found themselves, Mr. Chairman, in this same kind of situation, so since 1977, the state enacted their part of the partnership.

I have lived and dealt with these kinds of issues, and so from the point of view of the property owners, I have some understanding, although I am not one of them. I live in another part of my district, but I have some understanding of the problems that you face.

I also have taken the time to look at this issue from the other side, though, and I know that from talking to scientists who I don't consider environmentalists in the sense of the word that they don't belong as a major part of their human activity to one of the major environmental groups or spend a lot of time, they investigate. They are biologists and zoologists and those types of folks who have convinced me that there is an absolute need for the future of our planet to be cognizant of and try to deal with human activities that cause a variety of species to become extinct.



I find myself representing a large number of people who are like yourselves, but I also find myself living in the most densely populated state where we can really do a lot of damage in New Jersey to a whole variety of species that we need so that planet Earth can continue in the form that we know it.

I am kind of in the middle. That has put me in a position to try to find, as Dr. Maple just pointed out, some way to change the law which Mr. Young also wants to do so that the Endangered Species Act will work so people don't find themselves in situations like you three folks found yourselves.

We are trying to address the issue of compensation, we are trying to address the issue of regulation, all those things in this bill.

Let me ask you each a question. Cindy, I didn't hear your testimony, but I understand that you were stopped from disking fire breaks. Is that a proper way to characterize what you were stopped from doing?

Ms. DOMENIGONI. That as well as farming, yes.

Mr. SAXTON. As well as farming.

Ms. DOMENIGONI. Yes.

Mr. SAXTON. Did anyone from the Federal agency ever come to you and say anything like this at any time, look, we have got a problem; it involves your land; we would like to find a way to work this out so that you can continue to farm and live here?

Ms. DOMENIGONI. No.

Mr. SAXTON. They did not?

Ms. DOMENIGONI. No.

Mr. SAXTON. Margaret, did anyone ever come to you and say we understand that you have just re-inherited this 15 acres, and we have got a problem with some species that live there, and we would like to work with you to try to figure out a way that you can sell your land to a developer and make your profit or recoup your money, and we would like to work this out with you?

Ms. RECTOR. No. No.

Mr. SAXTON. Lloyd, how about did anybody ever come to you and say words to that effect?

Mr. GOOD. On the contrary. Absolutely not. In my particular case, once the Endangered Species Act contemplated jeopardy, there is a requirement that the Fish and Wildlife Service develop reasonable and prudent alternatives. They can't even do this under their own regulations until they consult with the applicant and the Corps.

In my particular case, they never bothered to consult. They just came up with these so-called things arbitrarily and capriciously without consulting as required by their own rules and regulations, so they are not consulting, but they are doing so in violation of their own rules.

You have got an agency basically that is ignoring their own rules and regulations. It is a bad situation, sir.

Mr. SAXTON. What if we changed this law in such a way that the agency was compelled to come and ask that question and then say here are some alternatives that we think might work to protect the species and permit you to farm, permit you to sell your land, permit you, Lloyd, we are not sure what we going to do with your



land—it doesn't matter, but what if somebody came to you? Do you think a system like that could work?

Mr. GOOD. Only if the persons coming up with the alternatives were not the same agencies that are dictating the enforcement.

You can't have the agency act as prosecutor, judge, and jury of each case. It is not going to work.

Mr. SAXTON. Well——

Mr. GOOD. Unless there is some methodology whereby——

Mr. SAXTON. The Chairman is reminding me that my time is up.

I would just say this to you. We want to get you and other folks who find themselves in situations like you are out of those situations, and we also have a responsibility, if you believe as I do, that the variety of species that we are trying to protect are important, we also have a responsibility to try to do that mission.

I see my task here is to try to find a way to do both of those things, and we are working hard, some of us, to try to accomplish that.

Thank you again for coming here. My time is expired. Mr. Chairman, thank you for letting me go over.

Mr. SHADEGG. Certainly. Mr. Gilchrest.

Mr. GILCHREST. Thank you, Mr. Chairman. Dr. Maple, what role do you think zoos should play in recovering of species, endangered species in particular, and why is it important to have species live in the wild?

Mr. MAPLE. There has been a lot of hype about what zoos can do for endangered species. I think the two most important things we can do is to promote the idea that wildlife has to be protected in their natural habitats. That is the first priority.

We feel like zoos are there to educate people about the importance of these animals living among us, and we know that while we can build up self-sustaining populations of a few animals, that you will only be able to do that for a few.

There is limited space in the zoological garden. Our technology is getting better, but we are not yet able to use artificial insemination and other techniques to where we think these will really be a panacea for endangerment. There are many, many animals that are not even held in zoological gardens.

I must say zoos and aquariums have made a lot of progress in this area. The most important thing, I think, that has happened is that we have entered the information age and we are communicating with zoological gardens and aquariums all over the world now and cooperating on world conservation strategies, but we find ourselves more and more in dialog with other environmental groups and governments in attempting to save animals in their range countries and that includes trying to save animals in America.

The other thing about zoos is, I call zoos examples of mainstream conservation. We work very closely with industry and business in our communities. We have very good relationships with people that are sometimes in conflict with these goals, and we feel like we are good mediators.

I liked what Jim said about trying to go and reasonably discuss alternatives to these problems. I think zoological parks people are by nature in the middle of this problem. We do have an important role.

Mr. SHADEGG. Thank you. Ms. Campbell, other than, and there is a lot of philosophy, I guess, that can surround the idea that man should take care not to accidentally or on purpose cause the extinction which is forever of a plant species and animal species or whatever it might happen to be.

I think it is incumbent upon us to work in as cooperative a fashion as is possible to limit and reduce the extinction of species on this plant for aesthetic reasons, and also, we are not going to be here, as the Chairman previously stated, what does it mean to preserve a tree. A tree grows in 500,000 years, but it is eventually going to die.

I think there is some degree prevailing upon us that I don't think there is anybody in this room that is going to be alive in 2096, but we are preserving the resources for the people that will be here in 2096, so I think there is something to recognizing some ethical value to a variety of species.

The question I have to you, ma'am, is what are the reasons that you can give us for the importance of protecting diversity in the plant population?

Ms. CAMPBELL. Thank you, Mr. Gilchrest. Plants in particular are the foundations of most of our ecosystems. If plants were not converting oxygen and soil minerals into carbohydrates which the rest of the animal kingdom, including we, depend on, we might be similar to those tube worms in the deep ocean trenches living off some other chemical formula, but we wouldn't be what we are today.

It is true, I believe, that——

Mr. GILCHREST. Can I interrupt just for a second? Could you elaborate on that? We got a yellow light. You won't be able to elaborate too long, but we are what we are to a large extent because of——

Ms. CAMPBELL. The vast majority of ecosystems with the exception of a couple of bacteria and tube worms that rely on methane and other chemicals that to us are poisonous, we depend on a carbon-hydrogen-oxygen cycle that plants play an absolutely crucial role in pushing along in its cycle, plants and microorganisms that we think even less about than plants.

Everything you eat, the air you breathe, the house you build, the paper your notes are written on all come from plants or from something that ate plants, or in the case of coal as a fuel or oil, plants that have decayed.

We would be in a completely different world if we didn't have plants, and the importance of plant species is that each has evolved to cope with a specific kind of situation in a specific place and if we lose plant species, we lose those adaptations.

There are also many other benefits to the chemicals they produce, medicinal and other uses, but the red light is on. Thank you.

Mr. SHADEGG. Thank you very much. Mr. Calvert.

Mr. CALVERT. Thank you, Mr. Chairman. I tend to believe that this hearing and what we are trying to do to reform ESA is about common sense, and what has happened to the landowners here today is evidenced by a lack of common sense by those who are enforcing the Endangered Species Act.



I don't think, Dr. Maple, you would agree that there was a lack of common sense in prohibiting Cindy Domenigoni from farming her property that she has farmed for 100 years, and this has created, I think, the division that we have in this country because of the abuses of the Federal Government in enforcing the Endangered Species Act.

A question I have for you, Cindy, you have now resumed farming on your property. Do you believe there are any less rats on your property than the property that is nearby that is considered critical habitat that is maintained as habitat?

Ms. DOMENIGONI. No, not right now. We are probably actively farming our property more than we were before because of the fact that we are concerned that if we do leave our properties fallow at any time that we may end up having the same problems or more problems.

Mr. CALVERT. So in effect, you are saying that you have an incentive to go out and make sure that species don't return to your property where before, you had no problem with sharing your property with what was allegedly an endangered species?

Ms. DOMENIGONI. That is exactly right. The regulations caused—the perverse incentives from the way the Endangered Species Act has been administered right now has made us rethink our position as far as our farming operations are concerned.

Mr. CALVERT. I was thinking that is just a total lack of common sense on the part of the Federal Government.

I understand the GAO has concluded that the Endangered Species Act and no disking policy had no relationship to the fires on your property, and of course, I am from the area. I know better, and certainly, you do. Could you elaborate a little bit?

Ms. DOMENIGONI. Yes, and I might, if it is OK with the chair, also defer to my friend and neighbor, Michael Rowe, who had an experience in regards to disking as well. In fact—Mike, do you want to help me answer the question, if that is OK with the chair?

Mr. SHADEGG. Certainly.

Mr. CALVERT. I certainly am going to stay roughly within the time limits.

Mr. ROWE. Thank you, Mr. Chair, Mr. Congressman. I am a neighbor of Cindy Domenigoni, and I was part of the interview of the General Accounting Office that came out to our area after the fires to entertain whether or not the protection of the Stephens' kangaroo rat had an impact on the intensity of the fires and the losses of additional private property.

Unfortunately, after that report was done and issued to the general public, it became clear to myself and to other parties that were referenced in that document that the General Accounting Office had misrepresented the information that we had provided them at the time of the interview and had construed our comments in a fashion that supported their conclusion that fire preventive measures had no impact on eliminating the hazard and the loss of property as a result of those fires.

There is great concern in that regard in that it was a governmental agency that quite honestly, as the report came out, many people that were involved in it acknowledged that it was in support of a predetermined conclusion that the Interior Department wanted



to prove that there wasn't any responsibility and in order to do so, had to do a document to support that and used information that we provided in open discussion with them to support their views and essentially change the remarks that we made.

Ms. DOMENIGONI. If I may add a little bit to that as well, if you see the map that is exhibited over here, it shows that the yellow area is the property that we own that we had been prohibited from disking and if that property had been in production at the time of the fire, there would have been a very good possibility that it would have diverted or at least been able to allow the people that combat our fires to be able to get it under control.

Also, the triangular section that is on the map, that area was an area that was disked on our ranch that actually saved my husband and myself and 100 head of cattle during the fire. We were moving our cattle, because the pasture that they were in was an inferno at the time. It was about 2:00 a.m. in the morning. It is not a good time to move cattle, along with the fire, but we were able to find a safe harbor there. It was a seven-acre disked field that we sat in for four hours during the fire with our cattle while the fire burned around us. That disked field did save us and our cattle.

Mr. CALVERT. Thank you, Cindy. I have just one further comment, Mr. Chairman, about plant species which we understand—we all want to conserve plant species and animal species. I think everyone here does. It is just that we want to use a dose of common sense, and I want to bring up the plant species in our area, also the star wooly, which is a plant species that unfortunately tends to grow in creek areas and flood control channels.

Mr. Chairman, we are unable to clear out our flood control channels in Riverside County, and that has caused an overgrowth of material in the flood control channels. Just several years ago, we had a large flooding activity, and this went on down into the Santa Margarita creek area near Camp Pendleton near the San Diego coast. The debris created a backfill of water that finally broke through. It broke through a dike that protected the helicopters over at Camp Pendleton, and millions and millions and millions of dollars worth, I believe it was \$70 million worth of helicopters were destroyed at that site.

Again, Mr. Chairman, I would say that is just a total lack of common sense if we can't clean out flood control channels because of conversion of wetlands and protection of the Endangered Species Act. That is not the intent of the law, and I thank the Chairman for letting me go beyond my time.

Mr. SHADEGG. Mrs. Cubin, I understand Mrs. Chenoweth has an obligation and is requesting that she be allowed to go first. Is that agreeable with you?

Mrs. CUBIN. Mr. Chairman, I have no questions at this time. Please let Mrs. Chenoweth.

Mr. SHADEGG. Mrs. Chenoweth.

Mrs. CHENOWETH. I see my staff is holding their head back there. I guess I do have an obligation.

I wanted to ask Faith Campbell. You made a very excellent point in your testimony on page one about the fact that ESA does not permit leasing of geographically separated populations of plants. That also is true of animals, too, isn't it?

Ms. CAMPBELL. It is true of invertebrates but not of vertebrates.

Mrs. CHENOWETH. Now, does the law itself allow for geographic listing of vertebrates? The law.

Ms. CAMPBELL. Yes.

Mrs. CHENOWETH. Or the regulations?

Ms. CAMPBELL. The law.

Mrs. CHENOWETH. Could you cite for me specifically?

Ms. CAMPBELL. No, I can't. I don't have it in front of me.

Mrs. CHENOWETH. I haven't been able to find that in the law, so I would appreciate your getting back to me on that.

That is why I found it interesting when you spoke about the distribution of funds. You were allowed that you made \$392,000 for your projects while the experimental expenditures for the Snake River spring chinook salmon received \$18 million and that indeed is a geographically listed species and really abounds very plentifully in the ocean.

I was glad that you pointed that out, and I would very much like to hear from you.

I want to welcome Cindy and Margaret. Thank you so much for coming such a long ways.

Dr. Maple, you have great influence in this body, and I appreciate your background and your intellect. You indicated in your testimony that you are a businessman. I missed what business it is that you do. I realize that you are highly esteemed.

Mr. MAPLE. I am the chief executive of Zoo Atlanta, a \$10 million corporation.

Mrs. CHENOWETH. Oh, I see.

Mr. MAPLE. A nonprofit corporation that we removed from government in 1984, you may remember.

Mrs. CHENOWETH. Now, is that supported by taxpayers' funds?

Mr. MAPLE. What Zoo Atlanta does and a lot of other zoos, as well as universities, is from time to time applies for local, state, or Federal funding, but the operating budget is supported entirely by money that is earned revenue, so we are essentially out there in the business world marketing and promoting the business.

As I pointed out in my testimony, I operate a payroll. We have 115 employees. I have to have a balanced budget. In fact, my board requires the budget be balanced, so the point I wanted to make by that is simply this, that good business principles and conservative principles for that matter are not incompatible with conservation principles. I find a goodness of fit there, and by the way, I am a conservationist who believes in common sense.

Mrs. CHENOWETH. I really appreciate that. I do want to ask you, a close friend of yours as well as the Speaker's is E. O. Wilson, and in February in the Audubon Magazine, Professor E. O. Wilson supported compensating private property owners when property is needed as habitat for the endangered species. I assume from your previous comment you agree entirely with the Speaker.

Mr. MAPLE. I am not at all surprised by that statement, and as you know, the Speaker has been in a dialog with Professor Wilson. There is a lot of common ground to be found, and I would hope that we could find more of it.

What we have got to do is be creative about the Endangered Species Act.



Mrs. CHENOWETH. Let me ask you, is there any personal risk capital of your own in the zoo?

Mr. MAPLE. Do you mean am I an investor in the zoo?

Mrs. CHENOWETH. Do you own the property?

Mr. MAPLE. No.

Mrs. CHENOWETH. That is why I think that perhaps the situations are a bit different than Cindy's or Margaret's.

Mr. MAPLE. Yeah, but I own a home, so I can empathize, and believe me, you are right. I am not up here with the same story, but what I am capable of recognizing is the terrible problems, and I can imagine, if I were faced with that problem, I would be very unhappy and I would have to believe that reasonable, rational answers can be found and if they cannot be found within the means of legislation, then we have got to make it possible.

Mrs. CHENOWETH. Mr. Chairman, I would like to ask for the indulgence of the chair because I may have to leave in a little bit. May I have a little more time?

Mr. SHADEGG. You have some time left, so proceed.

Mrs. CHENOWETH. Professor, Dr. Maple, I find it very interesting that you counseled us that there is power in being green and the Republicans should realize this, but I do want to state you that this is precisely the element that could rip apart the Republican Party for this reason.

Typically, Republicans are noted for talking about things that aren't very warm. You talk about budgets and numbers. The warmth of the issue goes right to the heart of what these people are talking about, and we have neglected that in the last year and a half. We have neglected the human element, and those of us who have tried to bring it to the front have been called extremists, and yet we hear these stories.

When I was down on Cindy's property, I talked to her neighbors and in escaping the fire, many of them barely escaped with their lives. Some had the tires burned off their cars, the paint burned off their cars. It was so tragic, and yet we can't seem to interject that human compassion into this issue.

I would look forward to working with you, because I feel, because I am exceedingly strong and committed about this, and I think there is a way we can bring the thinking together, but I don't want to see our party ripped apart because we are not the party of compassion.

Mr. MAPLE. Well, I think the party has a wonderful opportunity to exhibit leadership on this issue personally, and the people I have talked to, I see a growing recognition of the problems, an acknowledgement of these issues. I see this everywhere I go.

At the same time, as I said in my testimony, I meet Republicans every day who are committed to conservation. They want to find a way to get involved in conservation that is compatible with a sound budget, and I am very confident that we are going to find a process, that we can make that happen.

Mrs. CHENOWETH. Good. I am encouraged. Mr. Chairman, I just want to finish up with one thing, and that is, I would like to address this to Mr. Good.

I really sensed your frustration, but there is something encouraging on the horizon. The first case law to emerge out of a Federal



court that is really strong, and it is a case that was decided by the senior judge in the Claims Court on March 8th. The case is entitled *Age v. United States*.

Senior Judge Smith made these kinds of statements. Have you read it?

Mr. GOOD. No, but I admire Judge Smith.

Mrs. CHENOWETH. Judge Lauren Smith, yes, wrote in this decision, "While it is true that the judiciary has a particularly focused mission in protecting the liberties of the citizens, it is no less true that the members of the legislative and executive branches have an equally heavy responsibility regarding these same precious liberties."

This decision is full of good thoughts and research. The Judge goes on to say, "The right to just compensation is a fundamental right. It is as much a fundamental right as the right to vote and the right to free exercise of religion. At the heart of this society is the ability of its citizens to own property and exclude others, including the government, from using that property. As Justice Storey stated, 'The fundamental maxims of a free government seem to require that the rights of personal liberty and private property should be held sacred, and this mandate requires a court to determine when and whether government's actions destroy the rights and property that are essential components of ordered liberty.'"

I just hope this is appealed to the Supreme Court with this kind of decision from the Senior Judge.

Mr. GOOD. I hope they agree with it.

Mrs. CHENOWETH. I do, too, but I was very pleased with this decision. I thank the Chairman for your allowing me extra time.

Mr. SHADEGG. Mrs. Cubin.

Mrs. CUBIN. Thank you, Mr. Chairman. I would like to ask Mrs. Rector a question, if I may.

I am from the state of Wyoming and very, very sympathetic with what has happened. Although I didn't hear the testimony, I was able to review the written testimony, and we can give similar stories about the loss of use of one's property in Wyoming, basically what people have the right to, and in some cases, it is to pay taxes on it and nothing more.

So I am basically asking you this question so that it can be on the record so that the answer will be on the record. Why do you object to the paying of mitigation fee for your property to the U.S. Fish and Wildlife Service?

Ms. RECTOR. Well, I am not the developer of the property. Whoever buys my property will be the person to pay the mitigation fee.

This has hindered the sale of the property because people, the average person who has talked to me about purchasing the property simply find it hard to believe that they would have to pay to develop property that they would own. They just find it in disbelief, and of course, I would like my broker, who has contacted a lot of people, to give his version of what people have told him. He is in very close contact as my broker who is trying to help me sell my land, and I would like for you to listen to some of the comments that he has in the last few months.

Mrs. CUBIN. I would very much like to.

Ms. RECTOR. Bill Ward will speak for me.

Mrs. CUBIN. Please. I would like to hear that. Another thing that occurs to me is, and we all believe that preserving species, whether it is plants or animals, is a good thing to do, using common sense, but it occurs to me that if it is a good thing to do, then it is good for all of us, and why should just an individual landowner be the one that has to pay all the costs for this kind of preservation?

Mr. Ward, would you like to respond?

Mr. WARD. In response to your question which I think was why do you object, Ms. Rector, to paying a mitigation fee, which ESA may require.

A mitigation fee is not defined. I think the interpretation of the act is the whole key issue to this committee hearing. The act itself is a good act, I think, but the interpretation has gone rampant in this country in different sectors and all over the nation.

This chart shows the real estate cycle that Ms. Rector has written out, and what it doesn't show is how the cycle has now risen again to the '84 levels because of our growing economy in Texas.

Austin, Texas, is the envy of the Nation in job growth. We have a semiconductor industry in Austin that has created 27,000 new manufacturing jobs just this last year. It has fueled the economy, which is a true economy, with housing and with development all around Ms. Rector's property, and by virtue of use contiguous to Ms. Rector's property and using the guidelines set out by the act, Ms. Rector's property should be considered not habitat. It is not—as I was quoted there, by virtue of the neighboring uses, you end up with no habitat. The configuration of the taking of potential habitat is deemed not suitable as well because of its configuration. I was told that by the U.S. Parks and Wildlife.

At any rate, Ms. Rector shouldn't be singled out as a landowner to pay the burden of the entire area that needs to be set aside for an endangered habitat, and she, as a landowner, shouldn't bear all the cost.

Mrs. CUBIN. How much habitat does her property actually contain?

Mr. WARD. That has never been defined. It has never been defined that there is a bird on the property.

Mrs. CUBIN. That is what I was going to ask, how many birds are there?

Mr. WARD. It has never been defined that the entire property is habitat. It is in the area of potential habitat, and I use the word potential, because that is the word being used by the U.S. Fish and Wildlife to Margaret's case.

By using their guidelines of setting back from the properties already developed or that will be developed and have already been passed through the act, you use 250 feet from the roadway, 250 feet from the other property lines.

Her property is a 600-by-1,200 rectangle, and you end up with a narrow strip down the middle that could be potential habitat. I ask why U.S. Fish and Wildlife won't release this property and let her sell it at a fair market value which she is being denied by being hindered by habitat, potential habitat.

Mrs. CUBIN. Thank you very much, and thank you for coming. I know you have come a long way. It is important and we appreciate it.



Mr. SHADEGG. Mr. Hastings.

Mr. HASTINGS. Dr. Maple, I apologize if I am going to ask you questions of your testimony. I came in late, and I didn't see your testimony here in my packet. I just want to talk in a broad, general sense on the issue of endangered species.

I am from Washington state, and the state of Washington, in fact the whole northwest, has been hit by what I call a double whammy, at least potentially with the spotted owl and the potential listing of salmon on either the Snake or the Columbia Rivers, and there is a strong perception of my constituents, and indeed, people throughout the northwest that this act obviously doesn't work and that this act, as it is right now, is a threat to private property.

With that brief background in mind, as I view this whole issue, it seems to me that two issues need to be addressed to resolve this perception. Number one is, how do we deal with private property which is a constitutionally protected right; and secondly, how do we put good science into the mix, so could you address that?

I apologize for asking you again, but would you give me the benefit of your thoughts on those two issues?

Mr. MAPLE. Well, on the first issue of property, I think it is abundantly clear that people who feel strongly about these issues and stay polarized on these issues are never going to find the solutions that we are seeking.

I think we need to get more serious. I don't mean to say that the deliberations so far have not been serious. I know a lot of work has been done, and that bill certainly that Mr. Young put together took a lot of work.

But I think we have got to get more people around the table with a diversity of views on this issue, because if we get creative about the issue of property and compensation, some of these things that appear to be deal-breakers, I think we can find creative ways of making it work for people and animals.

It just doesn't make sense that with all the other complex business problems we solve every day that Americans can't find a solution to these problems which obviously in some cases requires some regional flexibilities. The problems in the Pacific Northwest are unique, but these things are happening all over the United States.

I see in Georgia a good bit of a spirit of negotiation and participation by industry in working with government to work out "win-win" solutions. You see this with the red-cockaded woodpecker as an example, and I think we need more of it, but the act has to be reformed in such a way that it permits us to find these kinds of win-win solutions.

Now, on the issue of good science, it is easy to really get after the science. I am hearing examples of bad science today, and I am sure there is a lot of it out there. I do think, though, there is a basis of good science behind the act. I think there are a lot of reputable scientists who have contributed to the philosophy behind it. Professor Wilson and Professor Eisner are good examples of that, but if our science in the field is not what it should be, then we need to reform it. We need to make sure that we are getting the best objective science. We need to have confidence in our science.

I am ashamed when I hear these things. I am a scientist myself, that Americans don't trust the science or many of them don't, so



we have got to make sure it is trustworthy, but at the same time, I think we are also going to have to in the end, while we know what the scientific evidence tells us, we are still going to have to set priorities, because we are not going to be able to do everything that science tell us we ought to do. I think that is abundantly clear.

Mr. HASTINGS. You mentioned private property rights, that there needs to be a solution, and I certainly couldn't agree more. I am asking, though, if you have a specific solution to that. What would you suggest, because people like some of these witnesses and certainly as a farmer in my district, for example, just last week said that if he were to discover a gray wolf crossing his property, he would, number one, not report it, and more than likely, probably shoot the gray wolf.

Mr. MAPLE. That is wrong. You have got to be proud of that wolf, and you have got to want to have that wolf around, so we have got to make the system responsive to this.

Mr. HASTINGS. So there would have to be then some sort of provision, some compensation for takings.

Mr. MAPLE. Well, I have used the example of East Africa. If elephants trample your corn in Kenya, the conservationists all over Kenya say that a farmer ought to be compensated, because they want the farmer to be bought in on the conservation.

We see that ecotourism is part of the money that supports good conservation ethics all over the world. Somehow, we are not practicing this at home.

A good conservative might say that if there is too much money in this thing, it would be a budget buster, so maybe it has to be addressed in some creative way. I don't know how much money it would require to be fair, but it needs to be studied.

Mr. HASTINGS. But would you agree with the principle that there needs to be some sort of recognition that the takings have to be compensated in some way?

Mr. MAPLE. I think that issue ought to be put on the table. I think intelligent people ought to talk about how to make it work for private property owners as well as the wildlife, and we share moral and ethical values that make us want to preserve wildlife.

Mr. HASTINGS. Let me——

Mr. MAPLE. We have to get down to the issues, the real issues that divide us, and I am not a big landowner and I don't know all the financial issues behind this, but I know that smart people, if they put it on the table, can find a way to deal with it.

Mr. HASTINGS. Let me just conclude by suggesting that without some sort of agreement on the takings, the unintended consequences because of this law—this is happening in western Washington, where private timber owners—timber in western Washington generally has a life of 35 to 40 years, sometimes 50 years, depending on where it is. In other words, in a lifespan, you will probably harvest only once.

There are people that have bought timberlands with the idea of retiring on that, and they have discovered a spotted owl right next to their property, so they are selling that land much more quickly, harvesting it, whatever the case may be, which I think has unintended consequences of the real act.

Unless we resolve this, it seems to me, it is going to get worse in many cases than it is going to get better.

Mr. Chairman, thank you very much.

Mr. SHADEGG. The time of the gentleman has expired. Mr. Hansen.

Mr. HANSEN. Thank you, Mr. Chairman. I have no questions for this panel.

Mr. SHADEGG. Mr. Maple, I want to start with you and let me first begin by thanking all of the witnesses. I appreciate your time in coming here. It has been very informative.

Often in the legislative process, hearing anecdotal evidence is the only way for us to get a sense of what really is happening. We sit back here and write these laws, and only through, Cindy, your testimony and Margaret, your testimony, and Lloyd, your testimony, are we able to hear how it impacts people and that is helpful.

I want to turn to Mr. Maple. It seems to me that you have made a couple of points here to which I would like insights. First of all, we will do no good in this process if we each characterize each other as extreme and if we each argue that the other is irrational and not willing to make progress.

In my own district in Arizona, because of my support for ESA reform, environmentalists are characterizing me as extreme. I don't see that as valuable in these hearings. I think what these hearings are supposed to do is to try to help us identify some common ground.

I believe we heard some very compelling testimony about what I have to believe is the unintended consequences of this law, and I would hope that every single person in this process recognizes that there need to be corrections.

I think it is fairly obvious that if we go on with the law as it is and it does things to Cindy and Margaret and Lloyd and is doing to hundreds and maybe thousands of other people like that, the law will simply not succeed in its purpose. We will continue to have species become extinct, perhaps at more rapid rates, perhaps at slower rates; it really doesn't matter, but we will continue to have divided the country.

I also do think that Mr. Hastings is right. Ultimately, this comes down to at least in some instances the issue of compensation. How do we deal with that if in fact it is important to preserve Margaret's land or Lloyd's land or the protection of those species and/or their habitat? Somebody has to pick up the tab, and I am absolutely mystified why the environmental community is so locked up against compensation.

It would seem to me that a true environmentalist would say, well, provided you are willing to give us enough compensation to do the job, then compensation is wonderful. It is the one sure way to guarantee that there is habitat for the species.

Mr. Maple, can you explain to me what the opposition to compensation is or are you willing to support compensation?

Mr. MAPLE. I think it has to be looked at. I think in all these cases, I think these people on this panel are no different than me. They would like to live among wildlife compatibly, but because of these unintended consequences, as you point out, they are unable to do so.



Mr. SHADEGG. Let us get beyond looked at. I agree, it has to be looked at. It is being looked at right now; it is in Mr. Young's bill, it is in the Pombo bill. It passed the floor here with a vote of 280 earlier.

I want to know what argument is there in the environmentalist community that opposes compensation and why can't we get that out on the table and discuss it?

If it is a question of there wouldn't be enough funds to do the job, then let us talk about a dedicated funding source.

Mr. MAPLE. I couldn't agree more. I have been saying this all day to everybody I have been talking to. I don't really understand why this is a deal breaker.

It does need to be looked at, and I am not prepared to say that if somebody quoted me some unbelievable figure of what it would cost, obviously, it would be hard to deal with.

It is being done on a smaller scale all around the world, so it seems to me that it is an issue that we must examine.

Mr. SHADEGG. I have my own bill in this area. It is an incentive-based bill. It is driven on the theory that right now, the law is driving landowners and those charged with protecting species apart, and we have concerned citizens in the middle saying, well, let us push the regulators further and further out that way, and let us push the landowners further and further out that way, and the net effect is that we are failing to protect species.

I notice that you did not prepare testimony here today, Mr. Maple. I would appreciate it very much and would ask you if you would be willing to agree today to go back and put together a list of those things that you see in the Young-Pombo bill, and if you would like to do it also for my bill, I would appreciate that, but I will ask only that you definitely agree to do it for the Young-Pombo bill of what you see as serious problems from your perspective.

Mr. MAPLE. I would be happy to do that.

Mr. SHADEGG. OK. Cindy, let me ask you, or you, Margaret, and Lloyd. Had you been approached by the Federal Government and asked to work with to protect habitat and species on your property, would that have been something you would have been willing to do?

I think you were asked earlier if that ever happened, and each of you said no, it never happened.

Ms. DOMENIGONI. I think if we had been approached early on, it would have been a much less adversarial position than we are in right now, and actually, on our ranch, we have done things to preserve wildlife.

We allowed guzzlers to be put on our ranch in the 1950's to water wildlife. We have quail—protected areas for quail, valley quail, and other things on our ranch over the years to actually protect them, and we have co-existed with the species over 100 years, and I think that if we had been given a chance to sit down and discuss this, it would have been a much better playing field than we are on right now, most definitely.

Mr. SHADEGG. Margaret, would you like to address that?

Ms. RECTOR. Well, in my case, it is such a small tract of land. I think ten acres were exempt by the law, but I happen to have 15, and the configuration of this land that I own with a busy, busy highway development, with development all around, I do not think



it is even suitable habitat, and I don't think that it ever should have been classified as having the golden-cheeked warbler, and therefore, I just think that I was caught in just a very precarious situation where I was just barely over the ten acres, but I really don't have good habitat due to the fragmentation. I have tried to sell the property, offered it to the nature conservancy. They said, we don't want it; it is too small, yet we can't use it.

Mr. SHADEGG. Has the nature conservancy acknowledged that it is not good habitat?

Ms. RECTOR. I beg your pardon?

Mr. SHADEGG. Has the nature conservancy acknowledged to you that they aren't interested because it is not good habitat?

Ms. RECTOR. They acknowledged to me in a letter several years ago that they were not interested in buying it because it was too small and the position being on a highway.

Mr. SHADEGG. They suggested it was not particularly good habitat. Lloyd.

Mr. GOOD. I suspect and many of my neighbors suspect that the true intent of the Fish and Wildlife in utilizing the Endangered Species Act in this particular case was to stop all development on this particular Key and had really nothing to do with protecting the endangered species on the property.

I brought this project down where I had originally 55 units on it. It reduced to 16 units. I put some 32 acres in preservation, and that would have satisfied it.

They actually came up with a plan where I would utilize the uplands on this property which was near and more deleterious to the species thereon, if they did exist, than the plan I proposed. If the plan that I proposed was likely to jeopardize the endangered species, the plan that they came up with was surely going to do it, and I have the testimony of my mammologist to that effect, so I don't think in my particular case that the Endangered Species Act was being used for the purposes for which it was enacted, but was being used by Fish and Wildlife to prevent the development of the wetlands on this property.

Mr. SHADEGG. In your own case, I guess the answer to my question, you in fact did make an offer and quite a substantial offer to forego the use of quite a bit of your land, right?

Mr. GOOD. That is true, and it was refused. Can I add this?

Mr. SHADEGG. Certainly.

Mr. GOOD. There seems to be some question that we are powerless to find a resolution of this. Our forefathers found a resolution many, many years ago in the Fifth Amendment to the Constitution.

If it is important and there is a public need to protect endangered species, then it should be a public, not a private expense. That is the Fifth Amendment. It is there. We just seem to have forgotten it.

Mr. SHADEGG. I take it you would not agree that honoring the Fifth Amendment is an extreme position?

Mr. GOOD. No.

Mr. SHADEGG. Thank you. I do think that it is important that we strive to tone down the rhetoric in this battle, that we look for common ground.

I, quite frankly, would like to believe that if it were not being exploited for political purposes and if it were not being exploited for, in some instances, fund raising political purposes, we could find a lot of common ground and in fact, improve the law in this area. Regrettably, it looks like we are not going to be able to do that at any time very soon.

I would like to thank each of the members of the panel for their time and for their testimony, and Mr. Maple, what would be a reasonable period of time, two weeks?

Mr. MAPLE. Yes, sir, two weeks is fine.

Mr. SHADEGG. Great. Thank you very much. I would like to call the next panel.

Mr. Gallian, Ms. Colyer, Mr. Vincze, Mr. Holmes, and Mr. Durham.

I would like to thank you all for coming and we will begin with you, Mr. Gallian.

**STATEMENT OF HONORABLE RUSSELL GALLIAN,  
COMMISSIONER, WASHINGTON COUNTY, ST. GEORGE, UTAH**

Mr. GALLIAN. Thank you, Mr. Chairman. I would like to thank Liz Megginson for giving me some extra time to explain this process to me. This is new to me. We appreciate the opportunity.

I am commissioner from Washington County, Utah, which happens to be one of the most heavily impacted counties in the United States with respect to the Endangered Species Act. We have nine or ten, depending on how you look at it, listed species. We have 50 candidate species. We have just last month obtained a permit for a habitat conservation plan which, in my opinion, is perhaps the most difficult one that has ever been done.

We also are working on what we call the Virgin River Management Plan, which is in itself a river HCP, and we are one of the few that have entered into conservation agreements to stop the listing of a species, in this case, the spinedace. I can tell you that we are trying our hardest to put our money where our mouth is and to do what we can do under the existing law.

One of the most difficult things about this whole thing is not just the law, not just the regulations, but the way the Fish and Wildlife carries out the implementation of that. They are Draconian in their approach.

I will give you one example. We have been at this situation, and it took us over five years to get our habitat conservation plan done, and over \$1 million. We are a little county whose entire general fund budget is between \$7 million and \$8 million a year. We are planning on spending \$9 million over 20 years on our habitat conservation plan, and I personally estimate that the value of the land trades that will occur are some \$200 million in the furtherance of a take permit for 1,600 tortoises to help save 8,000 tortoises. You might think that that is a rather extraordinary cost. Well, we think so, too, but nevertheless, we are doing it in order to allow us to move forward.

The reason is, when the Fish and Wildlife first visited us, they told us that everything below 4,000 feet, which is basically our entire lower development zone on the map there is desert tortoise habitat, and they threatened to shut down our entire area.



Washington County is one of the fastest growing communities in the inner-mountain west. This is a very significant threat, since about 20 percent of our jobs are growth-dependent, building construction and all the related fields that we have.

We do believe it is in the best interests of the people of the United States and our local interest in the states to pursue a policy to work in partnership to save savable species. We believe in that. We believe in the basic concepts of the act.

The problem is the way that it is actually implemented by the Fish and Wildlife through their regulations. It just doesn't work.

I think probably the reason—I am hoping that our testimony will be somewhat valuable to this committee—is that you have before you someone who actually is doing a very complicated habitat conservation plan, in fact, two of them, plus a conservation agreement. The Fish and Wildlife Service and the Department of the Interior has touted ours as showing that it really can work, that habitat conservation plans are the answer.

Now, we actually believe there is some truth to that. The problem is how difficult they make it, how expensive they make it. We threw our hands up so many times during the process, and Representative Hansen will tell you, because he was with us all the way, how difficult they make it, how unreasonable they make it, how they lie to you constantly. It basically just drives you up a wall.

Some of the things that we dealt with, if you are going to do habitat conservation plans, for the most part, you are going to have to set aside large areas for habitat, and if you need private property or in our case state school trust property, property the Federal Government gave to the children of our area to help them basically raise money for schools—on your maps that you have in front of you, all the blue that is within the desert tortoise preserve is owned in trust for the schoolchildren of the state of Utah. It happens to be the most valuable property per square acre in the entire system of our school trust. All the white that is in there is private property, some 7,000 acres valued at over \$80 million.

What do you do for these people? Well, we did the habitat conservation plan so that we could get them out of this terrible mess and the Federal Government has said that they are going to trade their property for ours so that we can accomplish this. The problem is that we haven't accomplished that yet, because as we have gotten into the appraisal process, we agreed on an appraiser, they gave us a price. One of our landowners said I would like to trade my piece for this piece, and they said, well, we need a second opinion, another appraisal.

They selected another appraiser and that appraiser came back at one-seventh of the value of the original appraisal that was done. You just can't get a habitat conservation plan done if you don't pay people a fair price. Nobody is going to walk away from their property for nothing.

Literally, with the solicitors from the Fish and Wildlife Service, the regional solicitor told us that it doesn't matter whether or not we are taking your property as long as we leave you a little tiny corner somewhere. That is legal; that is the Lucas case. We are not taking all of your property. We are only taking part of it.



The position that they take, very egregiously in my opinion, is that they can do whatever they want. They talk about mitigation. They have no standards for mitigation in reality. Mitigation is whatever they want to do.

I see that my time is up and I want to know if I could have some more time.

Mr. SHADEGG. Unfortunately, we have a number of witnesses. If you could summarize in the last minute.

Mr. GALLIAN. Thank you. I think one of the real shames that is happening here is a lack of scientific peer review or some way that you can get someone to take a look at this other than them.

When they set forth our critical habitat designation, they basically took the preserve that we were talking about for many years and painted an edge around it, even though the fact of the matter was that we set up the preserve not just for the desert tortoise but for other species as well.

I would say only about 25 percent of our preserve is actually desert tortoise habitat, but what they hit you with is this gene pool theory, transmission theories. They say, well, somebody wrote an article somewhere saying that you needed to have a transmission area between the population there and another one that is 20 miles away, and therefore, we need the whole thing in between. That is basically how they justify this, even though there are no tortoises on the property or none near.

One of the areas which is in the far corner of our map, called the Babylon area, is actually segregated by a cliff that drops about 200 feet straight down into a river that desert tortoises are not known to go through.

This is an area we included in the plan because of a translocation of tortoises and also for other species and notwithstanding that, the Fish and Wildlife Service has taken the position that it is critical habitat.

In our plan, for example, we had a permitted use on this property that grazing be allowed, people that have Federal grazing permits. Guess what? Our HCP says that is OK. Just in the last couple of weeks, the Fish and Wildlife Service in consultation with the BLM under Section 7 now says they have to get rid of their grazing permits. There are no desert tortoise on that property at all at this point.

So why are they doing this? It is being done for land control. They have come down in our area and very brazenly said, we are down here to protect the Red Rock country. They don't care about the endangered species. Well, they probably do, but not in any kind of priority.

What they care about is land control, what they think our area ought to be, so they used the Endangered Species Act as a second agenda purpose for doing that.

I have many more points, and perhaps in questioning, I will be able to bring those out.

[Statement of Russell Gallian may be found at end of hearing.]

Mr. SHADEGG. I thank you very much for your testimony. You don't consider all the people in your county extreme, do you?

Mr. GALLIAN. Not at all.

Mr. SHADEGG. Thank you. Ms. Colyer.

**STATEMENT OF SHERRY COLYER, BRUNEAU VALLEY  
COALITION, BRUNEAU, IDAHO**

Ms. COLYER. Mr. Chairman and members of the committee, thank you for allowing me to address your committee. I applaud you for continuing with the difficult process of ESA reauthorization.

I come to you today on behalf of the following five groups: the Owyhee County Commissioners, the Owyhee County Cattlemen's Association, Owyhee County Farm Bureau, Idaho Cattle Association, and the Idaho Farm Bureau. This coalition was formed to defend the communities of Bruneau and Grand View, Idaho, from the listing of the 615th species that would be protected under the Endangered Species Act, the Bruneau Hot Springsnail.

The Bruneau Hot Springsnail is the size of a poppy seed. It can be found in concentrations of a few to more than 20,000 snails per square meter. These snails mature and reproduce quickly and in large numbers, faster than rabbits. The snails live in hot water springs that are part of the same geothermal aquifer we use for irrigation.

This listing has threatened the livelihood of approximately 60 family farms and ranches, many of which have been in the same family for over 100 years. Bruneau is a small town by any standards. Agriculture is the sole economic base to support our school district.

As a school board member, I know that without this stable economic base, our school district would cease to exist. A century of productive, hard-working, taxpaying citizens would also perish.

Because Bruneau is a high desert area, irrigation water is necessary to farm or ranch. Annual rainfall is only 7.9 inches, and without irrigation water, farms and ranches have no value.

The current Endangered Species Act gives U.S. Fish and Wildlife the authority under consultation provisions to control the activity of any Federal agency that might happen to impact an endangered species.

Let me give you an example of what happened in our community. Shortly after the Bruneau Hot Springsnail was listed as endangered, Dr. Charles Lobdell, chief of the U.S. Fish and Wildlife in the Boise office, stated in a press release that the farmers and ranchers in the Bruneau Valley would not be harmed by the listing. Within one month, he informed the Farmer's Home Administration that they must consult with him before renewing operating loans to 13 farmers in the valley who were dependent upon this FHA financing, and that he did not intend to approve the renewal of their operating loans for 1994.

The only option we had was to file a lawsuit against U.S. Fish and Wildlife Service. We had to sue our own government to defend our jobs, our community, and our homes.

The Bruneau Valley Coalition filed suit on basis of numerous procedural errors under the Endangered Species Act and the Administrative Procedures Act, and a lack of scientific evidence to justify the listing also existed.

In 1993, U.S. District Judge Harold Ryan ruled that the listing was arbitrary, capricious, and abuse of discretion and otherwise not in accordance with the law. The government chose not to appeal



the District Court decision, but two environmental groups who had become intervenors appealed the decision to the Ninth Circuit Court of Appeals.

The appeals court remanded the case back to the District Court to have U.S. Fish and Wildlife follow the proper procedures. A new comment period was opened, and data that was previously not available to the public was made available for comment.

The Secretary must now make a listing determination considering the record in its entirety; however, the Court granted protection to the snail under the ESA while this process is taking place. In essence, the snail is listed while they are trying to decide if it needs to be listed.

We have spent \$213,000 in legal fees and research. There were no large corporations or sugar daddies bankrolling this effort. The money was raised through individuals assessing themselves and grass roots efforts.

When the coalition approached the Portland Regional office of the U.S. Fish and Wildlife with a habitat maintenance and conservation plan, we were informed we should coordinate with the U.S. Fish and Wildlife employee that was a former paid staff member, lobbyist, and director of the Idaho Conservation League. This group sued U.S. Fish and Wildlife to list the snail, intervened in our case, and appealed the Federal court ruling. This U.S. Fish and Wildlife staff member was not serving the people, not serving the government, but motivated to serve her own environmental agenda.

The ESA needs a system with a balance of power. State and local governments need to be part of the process in determining listing, critical habitat, and recovery plans. Higher scientific standards with independent peer review in consultation with local elected officials is essential with any action. Agencies should be required to use more than the best commercial or scientific information available. Property owners need to be compensated if their business is affected by ESA.

Currently, a tremendous imbalance of power exists. The U.S. Fish and Wildlife Service needs adult supervision and to be brought under control.

Yes, farmers, ranchers, and private property owners are concerned with the preservation of species; however, if Noah had to go through the petitioning, permitting, and consulting process of the current Endangered Species Act, I am fairly certain that out of total frustration, he, too, would have left some of God's creatures behind.

We ask for you to move forward and correct a law that is three years delinquent. Thus far, we have stood our ground against the government in taking away our precious way of life, our farms, our ranches, and our homes.

The fear, anger, and hatred that the current ESA causes is counterproductive. Please reform this law.

Again, thank you for your time and consideration.

[Attachment to statement of Sherry Colyer may be found at end of hearing.]

Mr. SHADEGG. Thank you very much for your superb testimony. Mr. Vincze.



**STATEMENT OF ROBERT J. VINCZE, MO-ARK ASSOCIATION,  
OVERLAND PARK, KANSAS**

Mr. VINCZE. Thank you very much. It is a privilege to appear before this committee on behalf of the MO-ARK Association. MO-ARK is comprised of over 400 member associations, companies, and individuals primarily in Illinois, Iowa, Kansas, and Missouri.

I am here to promote the responsible reform of the Endangered Species Act. I trust that Congress will not allow the debate on the ESA to be limited by the notion that anyone in favor of reforming it is opposed to the environment. Of course, this notion is not true. MO-ARK is interested in improving the ESA, not in scuttling it, and I appreciate the efforts of this committee along those lines.

The midwest has been dealing with a number of issues relating to the ESA. Many of these issues relate to the Kansas, Missouri, and Mississippi Rivers and bottom land farms.

With respect to the rivers, the Corps of Engineers is presently preparing a revised draft environmental impact statement (DEIS) for proposed revisions to the Master Manual for the operation of the Missouri River Main Stem System. The DEIS is being driven by the endangered least tern, the threatened piping plover [birds], the endangered pallid sturgeon and other species that are candidates for listing. The operation of the main stem system and its authorized purposes hang in the balance, including flood control, irrigation, water supply, navigation, power, and recreation.

To understand how endangered species affect the rivers and bottom lands, it is helpful to review the potential impact of the preferred alternative, that the Corps, incidentally, withdrew under the draft environmental impact statement.

Among other things, it called for a spring rise that would potentially lower the reservoirs in the upstream states, cause interior drainage problems for bottom land farmers, and disrupt navigation on the Missouri and Mississippi Rivers.

Such a plan also would have exacerbated spring flooding. The great flood of 1993 and flooding in 1995 were recent reminders of the importance of flood control. Remember, it was a Federal disaster area.

The preferred alternative also called for reduced fall flows that would have adversely affected navigation on both the Missouri and Mississippi Rivers during the harvest when we need it most to ship our nation's grain.

A look at the species driving the DEIS will show that the Endangered Species Act is in need of improvement. First, the United States Fish and Wildlife Service has conducted genetic studies of the so-called pallid sturgeon. These studies failed to differentiate it from the more plentiful shovelnose sturgeon. Limitations on the definition of species under the ESA would help insure that we do not misdirect our scarce resources.

Second, the endangered interior least tern is the same bird as the least tern that is more plentiful in coastal areas. Are we managing a fringe population that would naturally wax and wane with changing conditions? Defining a species range in the ESA would also help ensure that our resources are not misdirected.

Third, in 1995, several groups submitted a joint petition to list the sturgeon chub and sicklefin chub [fish] as endangered under

the ESA. The petition did not include data on over 105 locations where such species were known to have existed.

In addition, the petition ignored an ongoing, now-complete study by the Missouri Department of Conservation on the Chubs, and I will submit that for the record. You can have that as an additional comment.

The process cries out for adding a qualitative component to what constitutes the best scientific and commercial data available in the listing process under the ESA.

With respect to farmland, there is an inherent conflict between bottom land farms and wetland regulations. The ESA should be amended to ensure that it is not unlawful for a farmer to continue to farm his fields.

Lastly, present regulations under the ESA pose serious consequences for bottom land farmers and their communities in times of flooding. During the great flood of 1993, levee districts were delayed in making repairs to breached levees because the areas they had previously designated as a source of dirt [borrow] to repair their levees had become overgrown. While their homes, fields, and communities flooded, placing human life in jeopardy, agencies were making determinations about the environmental impact of cutting down trees in such previously designated areas. Wetlands mitigation banking needs to accommodate emergency levee repair.

In addition, the definition of what constitutes a take of an endangered species should exclude the destruction of habitat on such designated land. Surely, it should be lawful to destroy habitat to protect human life.

The members of the MO-ARK Association thank you for this opportunity to convey their concerns to the Committee on Resources. I submitted supporting documentation to your staff, and with the chair's approval, I would also like to submit for the record a resolution adopted by the board of directors of the Missouri Levee and Drainage District Association.

Mr. SHADEGG. Without objection.

Mr. VINCZE. Thank you.

[Statement of Robert J. Vincze may be found at end of hearing.]

Mr. SHADEGG. I appreciate your testimony. Mr. Holmes.

#### **STATEMENT OF TOMMY HOLMES, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 104, PHOENIX, ARIZONA**

Mr. HOLMES. Good afternoon. My name is Tommy Holmes. I am a business agent with Teamsters Local 104 in the state of Arizona. On behalf of the 7,300 members in my local, I want to thank you for allowing me to testify before you today.

The majority of my testimony will actually be a video of the Kaibab Mill closure announcement in Fredonia, Arizona. The video will speak for itself; however, I believe the emotional statement will prove that there is a critical need to reform the Endangered Species Act.

The Kaibab Forest Products Company sawmill in Fredonia, Arizona, shut its doors last June after more than 50 years of operation. When those doors were closed, 200 good men and women suddenly lost their jobs. These men and women, many of them not



only native to Arizona but natives to the town of Fredonia and the surrounding area, were devastated by this closure.

The mill couldn't obtain enough timber harvest due to the act protecting the Mexican Spotted Owl. This slowed the flow of raw material into the mill from the Kaibab National Forest to a mere trickle.

Now, in a big city like Phoenix, a loss of 200 jobs wouldn't make much of a difference. We were talking about it yesterday to the loss of jobs, let us say in a town like Las Vegas, if you allowed two machines per casino, and what it would do to the population of a town like Las Vegas.

This totally devastated the town of Fredonia, Arizona. The 200 people, which I have a list of here, were not only just the workers, but if you take their families, if they have a wife and a child, that adds up to 600 people, and the people that have retired in that community which also depend on the people that are working to share the cost of the town totally destroyed that town.

The life of Fredonia revolved around the mill and you will see in this video that the employer and employees were devastated by and frustrated by the closure of the mill.

Mr. Chairman, balanced forest management throughout the Nation and reform to ESA are needed. The video shows the exact reason why.

This video contains raw footage and was shot by an independent producer. Portions include a documentary and controversy surrounding the logging in the national forest. The tape I have is cut from a longer version shot of the mill closing.

The first speaker you will hear is Don Olsen, at the time, the president of Kaibab Industries in Arizona. The second speaker is Bruce Whiting. The Whiting family owns the company. The third speaker is Jim Goodwin, a representative of Local 104 at the time, and of course, you will hear from several of the workers themselves.

I would like to start the video, please.

Holmes: Fredonia is a town of 1,200 people that sits on the Arizona-Utah border. Seven miles to the north is Kanab, a town of about 2,000 inhabitants. The Kaibab Mill, which has been in Fredonia for approximately 50 years, employs 200 people. The following is a story that shouldn't have happened.

Olsen: Starting early in 1995, we are going to start the process of a permanent closure of the Fredonia operation. Our facilities were good, our people were good, we had good customers and we had an excellent product reputation, but those were not the issues, but the resource was. Not in my wildest imagination, thinking about it and thinking back, would I have ever thought or I think anybody in our management group in terms of the intensity and the amount of adversity we would face through these four years. The North Kaibab, which you all know, many of you know much better than I do, was a beautiful forest out here, 240,000 or so acres growing 100 million board feet a year, but the sad thing is, in each of the last four years, the volume has been monitored from the Forest Service. From that forest, there has been less than 15 million feet a year.



Whiting: The only thing I can say is I am sorry, and I feel like I should say that, but I can't figure out why I am so damned sorry. I can't think of anything we did wrong. We had good employees, we had a good product, we gave good service, we had good profit. We did everything that you learn you're supposed to do in school. They want to kill you. The more you have good employees and you are efficient and you have a good product and your customers like you, you are truly successful. Not one time did anyone ever say to me, your government might put you out of business, because they don't like your industry anymore, and that is just what happened. We did nothing wrong; you did nothing wrong. Our management has we feel informed me. We tried to get legislation with problems with principal options. All thinking that no, reason will prevail; rational people will understand that what is good for people and what is good for communities and what is good for the forest is what's the right thing to do. Well, there are people who, I guess, our actual reason for hoping we would be very, very ungrateful if we didn't say thank you. Thank you to each one of you. Thank you to some of you who have had dads that worked here a long time, many grandfathers. Thank you to the communities. We couldn't have asked for a better place to help our business in Fredonia, Kanab. Thank you to your spouses and families for putting up with sometimes horrible work hours and we ask you to the thousands of times that worked late and work early and come home with bruises and scrapes. For a company to meet with death, it is just not fair. It is not fair to you, it is not fair to your families, it is not fair to Fredonia and Kanab and the other communities. It is not fair to the citizens, and it is not fair to that forest. This will cause us not to be out there until not—it'll just sit there and probably burn or rot. It is just not fair.

Goodwin: You have got employees about my age that have still got ten or 12 years to be able to retire.

Whiting: About my age.

Goodwin: OK, well, but the question was, are you going to sell this or do you think that within maybe five years you could come back again?

Whiting: Our plans today, our decision today, as I walk through that schedule by approximately June, May 15th to June of this year, we are going to auction off all of this facility, all of our rolling stock, everything. There will not be a mill here. Some day down the road would the North Kaibab come back, and people come to their senses, can there be a good, viable program so that people have certainty and so forth, there might be an opportunity to locate another mill here. There sure might be, but I can tell you from a business standpoint, a lot of things got to change before anybody would make an investment relying on public timber for that venture. 30 million acres burned on public lands this past year, and it doesn't seem to be getting people's attention.

Worker #1: Everybody thought it was just a certain little group that could do this and ruin people's lives, their homes. It is just not right.

Worker #2: This closure that we are faced with today is a very grim moment for everybody, not just the company but for the union as well, and there are a lot of questions that will have to be an-

swered that the union can also provide you answers on, and one of the most important things is that we have some long-term members here, is the questions on pension.

Worker #3: What is going to happen to the employees that have had past industrial injuries that limited their jobs and took their trades away?

Holmes: There really isn't a lot to say; it is a sad day, and it didn't need to happen. It doesn't make sense. In some way, some sense has got to come about at some time. This has happened in all parts of the country. We are not alone. I felt like the whole world dropped out because I've been down here 23 years, and it is just kind of a needless thing. If there wasn't any logs, you know, it would be a little easier to take, but when there is millions of board feet out there in that Kaibab Mountain Range, and we have to quit working because of goss moths and spotted owls and government red tape, you know, it is pretty tough to swallow.

That's what I feel about it. I'm kind of angry.

[Statement of Tommy Holmes may be found at end of hearing.]

Mr. SHADEGG. Thank you, Mr. Holmes. I appreciate your testimony and your very interesting video. It also brings up some very tantalizing questions, if I may say so.

Now, Mr. Durham, you are recognized for five minutes.

#### **STATEMENT OF HUGH DURHAM, INTERNATIONAL PAPER, BAINBRIDGE, GEORGIA**

Mr. DURHAM. Thank you. Good afternoon. My name is Hugh Durham. I am a wildlife biologist and forester for International Paper. My primary job responsibility is to manage threatened and endangered species for the company. I am headquartered at our Experimental Forest in south Georgia, and I am here this afternoon to talk about ways to improve the Endangered Species Act.

My employer, International Paper, is the largest forest products company in the world. The company has 27 mills and owns over 6.4 million acres of timberland in the eastern United States scattered from Maine to east Texas.

Twelve listed species are known to occur on our company's lands in seven states. Since 1993, we have completed two habitat conservation plans as provided for under the Endangered Species Act. One was for the Red Hills salamander, which covered 7,000 acres of our land in south Alabama. The second, submitted just two weeks ago, was for the gopher tortoise on 194,000 acres of company land in Mississippi and Alabama.

We have been able to work with the ESA and have even had some success. However, I will tell you from experience that the process can and should be improved. HCPs are a useful tool, but as currently structured, they are very time consuming and expensive. The HCP process is greatly in need of streamlining.

But don't think that improving the HCP process alone will solve the problem. We all know that most of the land in the East is owned by private landowners, but what many folks don't realize is that the bulk of that land is owned not by the big timber companies like International Paper, but by small private nonindustrial landowners.



The map before you illustrates the nonindustrial ownership among 32 eastern states. Each state colored in some shade of green which is every state east of the Mississippi River plus a few on the west side is a state where at least 50 percent of the forests are owned by small landowners. The darker the shade of green, the higher the percentage owned by small landowners, and in some states, it is as high as 80 to 90 percent.

I invite you to look very closely at this, because these ownership patterns are critical to understanding why the act as currently structured will never work as well as it should in the East. It won't work because to be truly effective, the small private landowner must be willing to engage en masse, early and voluntarily, to conserve habitat. Right now, they have got every reason not to.

Take my former state of Arkansas, which is fairly representative of the other eastern states from the perspective of forestland ownership. In Arkansas, there are 17 million acres of forest; 57 percent are owned by private, nonindustrial landowners. There are 160,000 of these landowners in Arkansas, and they own 9 million acres. Their average age is 62 years, and the size of the tract they own is 157 acres. These aren't rich folks. Statistically, this landowner will only live another 12 years. It is time for him and his wife to cut the 157 acres they have been tending for years and take a big cruise.

To expect this landowner to do anything that would jeopardize that, such as voluntarily leaving some of the timber standing for habitat is unrealistic at best. But that sort of voluntary initiative is precisely what is needed to happen all over the eastern forest for true conservation to take place.

I had an experience just recently to illustrate this point. My company and several of our competitors are initiating a three-year survey for several amphibians believed to be in need of listing. One of the member companies has a long-term lease to grow trees on some of the land that was to be included in the survey. When the landowner they leased from learned of the survey, he refused to permit his land to be included. He didn't want a third party looking for what might one day be a listed species on his land. As a result, the conservation opportunity was lost, because another private landowner considered the risk of engaging early too high, and it is too high.

But it doesn't have to be that way. Certainty and security for the species can be achieved by providing certainty and security for the landowner. There is an awful lot of local fruit out there that is just not getting picked because folks are scared to come forward.

I want to suggest three things that will improve the act, that is, to make it more effective at protecting species by making it less onerous to private owners.

First, provide technical assistance in the act for landowners seeking to manage for listed species. Developing an HCP is a very complicated and expensive process. For example, the gopher tortoise HCP we just submitted cost over \$70,000, and it has taken over two years to complete. What is more, consultants can charge up to \$800 per day just to tell you whether or not you have a listed species, much more to develop a plan for conserving them. Given the enormous expense and the technical nature of conservation plans,

the ESA should provide consultations to private landowners and funding for plan development.

Next, give the landowner an incentive to get involved in conserving habitat early and voluntarily. One way this could happen is through a strictly voluntary safe harbor program for nonlisted species. I believe there is something very similar to this in the committee's bill under cooperative management agreements.

Here is how it might work. A landowner comes forward and makes the government aware of a nonlisted species of concern that exists on his property and he engages a completely voluntary conservation program, he would enjoy immunity from the act in the event that the species is ever listed. This would greatly reduce the fear that landowners currently have of the act, and would likely encourage some innovative measures and all future listings.

Finally, there is a strong need for compensation for private owners, and not as a first resort, but as the last. No one that I know of, neither my company nor the thousands of small landowners we deal with, are particularly interested in selling off our productive forestland to the Federal Government. We own it for a reason, to grow and extract fiber, and we spend a fair amount of time and energy acquiring the most productive and strategically located forestland we can find. Selling off to the government is not a particularly attractive option, but it is kind of a safety net landowners need if we expect them to go the extra mile.

There is one point I would like to leave you with today, and that there is tremendous potential for conservation being lost in the eastern forest today. Yes, regulation has a role in conserving threatened and endangered species, but so does thoughtful, innovative public policy that unleashes the tremendous potential that is the private landowner of the eastern United States.

Remember, this is the guy that owns most of the habitat, and our laws should reflect that. Let us give them certainty and allow their collective innovation and commitment to their land abound.

That concludes my oral statement, and I would be proud to respond to any questions you might have.

Mr. HANSEN. Thank you very much. We appreciate the statements from all the witnesses. Myself and the gentlelady from Wyoming are the only two left, and I hope you folks realize that the Immigration Bill is on the Floor, there are hearings all over the place, and many members would have liked to have been here the entire time.

I was chairing another meeting earlier today, so I didn't get a chance to get over and I will apologize. Something as important as this, we ought to spend more time on it.

I recognize the gentlelady from Wyoming.

Mrs. CUBIN. Thank you, Mr. Chairman. I appreciated all the testimony very much, and it does seem to be the same kind of things that we continue to run into.

I don't have any questions for any of you, but I do want to make a statement. I think that you need to look at the actions of this year's Congress and you need to know what group of people are trying to do something about the situations that you described and the problems that you had, because there are traditional allies that ought not to be allies when you consider this particular issue.



I just urge you to look at who is trying to do something about that, because the Republican Congress is trying desperately to do something about it. There are folks that are blocking this progress and as long as they continue to be here and to serve here in large numbers, we will not ever get anywhere.

We will keep trying and we will keep pushing on to try to do something, because it is a constitutional issue, and I don't see how people can even argue that, but they do.

Thank you, Mr. Chairman.

Mr. HANSEN. To the gentleman from Idaho, can I beg your indulgence for just one quick question?

Mr. Holmes, I am probably going to hell for asking this question, but let me just ask you this.

I saw this very moving, emotional film you had there, and chairing the committee on the National Forest Service and public lands, the people from Kaibab Industries came to me long before they made this decision and said what do you think. I said if there is any way possible to stay in business, do it, and this is important as far as lumber goes, important for jobs, and part of our economy between Utah and Arizona.

It really amazes me when I have served here for a long time. I am in my eighth term, and my good friends who support this Endangered Species Act want to close this thing up, sit on this side of the political aisle. On this side of the political aisle, most of them want to do it and change it around.

Why is it that the unions are so strongly supporting the people that are killing it? Would you mind telling me that?

Mr. HOLMES. I am not quite sure that it is a political question as much as it is to figure out how to do the job.

I don't know how you can let a town grow around it, which we all probably consider barebacks, where they live up there in Fredonia and have grandparents there that worked in the mills and parents that have worked in the mills and all of a sudden be gone. I don't know if that is—somebody has got to figure it out. Now the union—

Mr. HANSEN. I have great respect for the unions, don't get me wrong, but I am from an area right next to you, Kane County. I have represented them for ten years. They took it away from me a couple of terms ago.

I represented Panguitch, which is the other side of Kaibab, which was still alive for a very short time, I am sure. I represented Escalante Sawmills. These same guys closed up Escalante Sawmills; 268 people worked up there, 268 people were out of jobs, Escalante Sawmill was closed.

I just frankly stand amazed. I can't understand that. I was looking today at this thing of who supports these extreme environmental groups—well, anyway, unfair question.

The gentlelady from Wyoming.

Mrs. CUBIN. Mr. Chairman, would the Chairman yield for a moment?

Mr. HANSEN. I would be happy to yield.

Mrs. CUBIN. You just came right out with it and now I can, too. The point really that I wanted to make, and I am not generally very tactful, and that is probably why I didn't get my message

through too clearly, but those of us, many of us, who have been striving to reform the Endangered Species Act and to do away with the rules and regulations and the kind of things that shut down the mill are being targeted by the AFL-CIO for defeat.

I don't understand why you—I don't understand how you balance that equation, that those people that are trying to help us are not the traditional people that we support. We support Democrats, and the Democrats are in fact the ones who are standing between us and reform and yet again, AFL-CIO has targeted many of us all over the country for defeat.

Can you explain that?

Mr. HOLMES. I can only explain my point of view. I hope you understand this; I am a Democrat.

But I look at every situation which the Endangered Species Act is a different situation and maybe the Teamsters look at a lot of things when they go politically. You are talking about this, and I am not quite sure where they stand on it, and I just want an answer on how to cure this problem.

Mrs. CUBIN. We have got the answer. We don't have the means because of the people that the AFL-CIO continues to give money to support for election. They give more money in political elections than any other group. We know what to do, but we cannot do it as long as the politics remain what they are.

Mr. HOLMES. I will go back and tell them that. That is about all I can do.

Mr. HANSEN. I thank the gentlelady and turn to the gentlelady from Idaho, Mrs. Chenoweth.

Mrs. CHENOWETH. Thank you, Mr. Chairman, and Mr. Holmes, I join with my colleagues. This has been very frustrating and it is hard for you to have to sit there and take this from us, because we are so frustrated with union leadership. It is your people's dues that are supporting these ads. They are defeating the people who have been standing out there on the forefront taking the slashes and lashes to try to get our people back to work and it is working against it.

Again, I apologize that you had to take the scolding from us.

Mr. HOLMES. Can I say one thing? I hate to interrupt here, but I am first of all, an Arizona native. I care most of all about the people in my town. I was speaking particularly about one issue, and the rest of it is different.

We walked off on that but we can talk about it some other time. I don't know how to cure this issue and I see a lot of things wrong. If everybody would cooperate—I understand where you are coming from, but I don't know how to cure that. I am only one vote, and the Teamsters have a lot of different votes.

Mrs. CHENOWETH. Yes, but you are one voice, sir, and if we had enough people out there in the field saying, we are not going to have our dues go to this kind of mischief, political mischief that is doing away with our jobs, your voices would have impact back here.

I see a great disparity between the union workers, people that you oversee out there in the field in Arizona and Idaho and Wyoming and all over, and what is going on back here in Washington, D.C., you are the dog, they are the tail, and you have got to wag



the tail, and that is all there is to it or else you are not going to have us here fighting your battles and we are fighting. We are fighting on the front line and taking a lot of abuse from your union bosses and a bunch of other people, and we are willing to keep doing it because it is right and because you people have helped forge the West and build this country. We believe in you, but we don't believe in this mischief that is coming out of your senior leadership.

I have a great deal of caring compassion for you and your men. This is sheer mischief.

Mr. HOLMES. I will be talking with Mr. Carey this afternoon, I hope, and I will——

Mrs. CHENOWETH. Thank you, and we would love to talk to your leadership. Thank you, Mr. Chairman.

Mr. HANSEN. We all feel better now, hopefully.

Mrs. CHENOWETH. Mr. Gallian, I find your map extremely interesting. I find that the borders for this tortoise border the Indian reservation, the Shivwits Indian Reservation.

Mr. GALLIAN. Yes.

Mrs. CHENOWETH. Did they find any tortoises on the Indian reservation?

Mr. GALLIAN. Yes.

Mrs. CHENOWETH. Excuse me, the Native American reservation?

Mr. GALLIAN. Yes.

Mrs. CHENOWETH. They did?

Mr. GALLIAN. There are some tortoises on the Indian reservation.

Mrs. CHENOWETH. Has any of that land been set aside for special management?

Mr. GALLIAN. No.

Mrs. CHENOWETH. Mrs. Colyer, welcome. I appreciated your testimony. I remember, I used to work for Senator Sims; and Senator Sims and Senator McClure set aside \$2 million to study the Bruneau Hot Springsnail. What happened to that money?

Ms. COLYER. We don't know. As you said, there was \$2 million appropriated. It was a line item, budget item for the snail specifically back in 1988, I believe. There has only been \$400,000 of that \$2 million that has been accountable to the snail project and no one seems to know the answer where the other \$1.6 million went. We have some pretty good ideas where it went to, but it didn't go to doing any research with the snail.

Mrs. CHENOWETH. Mr. Chairman, I just wonder if we can ask the Fish and Wildlife for an accounting of that \$2 million.

Mr. HANSEN. I am sure we can. I am sure we can. If you would like to make that in the form of a question, we will make sure that it is sent to them and ask for an answer within two weeks.

Mrs. CHENOWETH. Thank you. It is my understanding that the role of the Fish and Wildlife Service is to base their listings on scientific evidence. What types of studies are you aware of that the Fish and Wildlife Service performed in their listing to determine the habitat and in listing the snail and the critical habitat?

Ms. COLYER. Beyond looking for the snail within the Bruneau River drainage area, which is 5.28 miles of habitat that they have decided that is the snail's critical habitat, they have conducted an-

other study that they have called the Great Basin study, and that was done within the western states.

They hang their hat on that they have looked for the snail all over in this study. It was looked for in 396 different springs. Out of those 396 springs, only 34 of those springs actually had the habitat that the snail likes with the temperature being the same as to what it lives in.

Essentially, they were looking all over for the snail, but it would be somewhat like looking for a polar bear in Arizona. They are not going to find it in cold water. That is not where it likes to be.

Mrs. CHENOWETH. Interesting. They researched cold water springs?

Ms. COLYER. They looked for snails all over the northwest, and they weren't looking just for our snail but other snails. In the process of this study, they also found 52 other species that have not been identified and not known to man at this time.

Mrs. CHENOWETH. Up and down the Snake River, are you referring to the other snails that they have found that are the same size as these snails?

Ms. COLYER. There would be varying sizes, not just the Snake River basin, but it included Nevada, Utah, Washington, Oregon, Idaho, and I believe Arizona was also included, so it was a pretty broad area that they looked for them, and not just the tiny snails, but larger snails as well.

Mrs. CHENOWETH. But there are other tiny snails somewhat like this?

Ms. COLYER. Yes. Actually, there is another snail that has been found in cold water that is exactly the same as the Bruneau snail, only it was found in cold water.

Mrs. CHENOWETH. What makes the Bruneau snail so unique then?

Ms. COLYER. What makes the Bruneau snail unique versus the other snails that are just very prolific is the size of its sexual organ. It is fairly well endowed and that is what makes it unique.

Mrs. CHENOWETH. I was going to ask for more time, Mr. Chairman. I know he is listening, Sherry. I would like to ask for one more minute.

Mr. HANSEN. You know, sometimes, Helen, we are sorry we ask things.

Mrs. CHENOWETH. I think it is great, right there on the record. I have one more question.

This is a picture of the snail apparently.

Ms. COLYER. Yes.

Mrs. CHENOWETH. And this is a picture of a dime?

Ms. COLYER. Correct.

Mrs. CHENOWETH. And this is an insert of the picture of a snail in relation to the dime?

Ms. COLYER. Yes, it is actually about the size of a poppy seed.

Mrs. CHENOWETH. Or maybe the eye on Roosevelt?

Ms. COLYER. That is correct.

Mrs. CHENOWETH. Amazing. Thank you very much. I give back my time, Mr. Chairman.

Mr. HANSEN. Thank you very much. It is very obvious that this panel and the other panel is extremely knowledgeable. From my



own personal experience, I don't know anyone more knowledgeable than Russ Gallian from the Washington County area. I have known him for a long time and know what he has gone through.

Commissioner, if I could ask you to expound a little more on the process that you went through on the HCP, the cost of it, how long it took. The thing that disturbs me were some of the comments you made earlier about the Fish and Wildlife Service. I think their scope of authority is very clear, what they are asked to do. They are not asked to be a planning commission to determine the growth of a county. The scope of their authority is as clear and defined as can be, and it disturbs me that they have put themselves in this other agenda. If I am wrong, please correct me.

If you would expound on some of those areas, I would like to turn to you now.

Mr. GALLIAN. Well, their agents just can't contain themselves, and they make comments every once in a while that makes it clear—that actually explain the actions that they take. They consider themselves to be the protector of the Red Rock country. We have a lot of red rock in our area, so that is why they use that term, but we have heard three different agents say something like that. One in particular that seems to be the huge thorn in our side, that is the only way you can explain his actions, frankly.

We have tried and tried and tried to work things out with them, and we have made some progress obviously, because now after five years and \$1 million, we finally have an HCP. But the fact of the matter is that they make it very, very difficult, and they take unreasonable positions.

One of the things that really angers us is through the process, they tell you one thing, if they will tell you anything at all, then they do a 180-degree turn on the same information with their very material of the plan.

In December of 1992, I believe it was, some years ago, we submitted our plan and we thought it was pretty good. We consulted with them and thought we had gotten some feedback from them. Four or five months later, in April of 1993, they came back and demand 80,000 acres of property and then told us what they had to have to satisfy that. We had never even discussed most of this extra property as even possibly being needed.

I have to tell you, after that, I was so stunned that it was like Mike Tyson hit me with a right cross. I couldn't even hardly react to them at the moment. In the years that followed, we finally worked things out.

A good example is at one point, we threw up our hands in frustration, and we suspended our activities in the middle of this whole mess. So what did they do? They went out with our local state fish cops and put together about 30 or 40 people who came down in our area for three weeks, stayed at motels, and looked for violations of the Endangered Species Act. While they were up to this mischief, they found some poor little guy that had picked one up and threw him in jail for four days, and another landowner who has sort of become a bit famous in our area because he happens to be an environmentalist, Ken Anderson, had been developing a piece of property, spent \$600,000 of his own money on it, and during this time when they were down with their Gestapo tactics, it just so happens

that somebody filed a document with them saying they found desert tortoise in the very upper part of his property. Many of us feel they were placed there. But nevertheless, they were there, and they caused Mr. Anderson's property to be shut down. Even to this day, until we just got our permit, he hasn't been able to sell the upper reaches of his property. It almost bankrupted him.

That is just one small example.

Mr. HANSEN. As you folks realize, Mr. Gallian is a county commissioner and is also very fine legal counsel in that area. What about taking the legal route? Did any of you think seriously about filing lawsuits in various areas, trying to wind this thing down?

Mr. GALLIAN. Well, the problem is that what the law is, you have to exhaust your administrative rights. There lies the problem. They exhaust you in exhausting the administrative rights, and the other problem is that HCPs are inherently a voluntary situation, so that pretty much or somewhat limits what you can do in terms of the real legal possibilities.

The other thing is, in order to do HCPs, you have to be able to acquire the property. It is pretty hard to imagine a habitat conservation plan that wasn't land based in some way, so if you have to acquire these large preserve areas, how are you going to do it? It is very expensive.

In our case, property that we have in our desert, the tortoise preserve, you can throw a rock from the preserve to lots that have sold for \$180,000, one-third acre lots, so this is very, very valuable property. How do you accomplish this if the Federal Government is the one to compensate the property owners? The answer is, you can't.

Mr. HANSEN. You talked about peer review. Have you examined the bill that we now have pending and give me your reaction to the way that we have approached that problem?

Mr. GALLIAN. Well, it would be a huge help to have somebody to take a look at their work independently, because what really happened in our case was, there was a complete lack of science in the critical habitat designation in our humble opinion. After they came out with their public review and comment, we showed them, because we had the facts, exactly where the tortoises were and weren't, and they totally ignored it, using their gene pool theory. That is a theory upon which you can take whatever ground you want.

There is a tortoise here and there is a tortoise over there, and they are 50 miles apart. There has to be a corridor. I am being a little bit facetious, but that is exactly what they have done in our case.

They have areas in their critical habitat designation that are on the sides of cliffs that are above 4,000 feet, which they claim by their own literature is not habitat, and these are even areas that they admit aren't habitat, but they put them in anyway. Why? Beats us, but yet they do this anyway. We were able to resolve it by having an HCP, but had we not, we had already filed our 60-day letter to sue them.

Mr. HANSEN. In my other life, I was speaker of the house in the state of Utah, and I remember distinctly going down to the governor's office, a good governor by the name of Scott Matheson, who was a Democrat and a very fine gentleman.



He was livid. I said, what is the matter, Scott; and he said, that I am so blankety-blank mad because people are coming into this state and getting their MS or Ph.D. on an endangered species. He said why don't you get back upstairs there and pass a law that they can't come into the state unless they post a bond of \$100,000, unless they go before a group of scientists and others, that we know that the person has the moxie, the whole reason to do this because they're going to grind us down.

That was years ago. What would you think? Just off the top of your head, what do you think of the governor's idea of posting a bond to go in?

What concerns me is that there is about 1,524 species listed. Only 19 have been removed and two of those were by lawsuits. As you look at how many are pending, in our little state of Utah, we have listed 38 with 212 pending. Now, if you think you had trouble with the desert tortoise, what about the other 41 Washington Counties that are sitting there waiting for somebody to come in and close up and move out?

Mr. GALLIAN. If Mr. Studds' bill which was proposed last year passed giving them the same protection, we would have to shut down.

Mr. HANSEN. That in effect closes the county, right?

Mr. GALLIAN. Yeah, basically. Sure.

Mr. HANSEN. If you took every one of these in these 48 contiguous states, you would close up this country.

We would close up this country, and I don't know how we would ever get it operating. The people in Texas were laughing at us until they had the possibility of losing six counties in one fell swoop.

The gentlelady from Wyoming, do you want another shot?

Mrs. CUBIN. I have nothing further, Mr. Chairman.

Mr. HANSEN. The gentlelady from Idaho.

Mrs. CHENOWETH. I have one question for Mrs. Colyer. This is with regards to standing. Those people who sued or who appealed were not the Fish and Wildlife Service. It was the conservation league or——

Ms. COLYER. That is correct. The government chose not to appeal the decision. In fact, we were in the process of negotiation for attorney fees at the time. The two environmental groups, the Idaho Conservation League and the Committee for Idaho's High Desert who were allowed to intervene in the case at the district level appealed the decision.

It wasn't the government that chose to appeal; it was the two environmental groups.

Mrs. CHENOWETH. How did the court reason that they had standing? Usually, you have to have a direct economic interest. That goes back——

Ms. COLYER. The way that the current ESA is structured is that environmental groups have more standing than do private property owners, and that is one thing that we would like to see addressed in a new ESA, is that private property owners and people that are directly affected need to have some standing so that they can bring lawsuits and make sure that these listings are needed.

But currently, environmental groups are the only ones that are granted standing in court.

Mrs. CHENOWETH. Thank you very much. Thank you, Mr. Chairman.

Mr. HANSEN. Thank you. Recently, in St. George, we had this big signing hurrah; I was unable to attend. Senator Bennett went down from the delegation. Now what happens?

Mr. GALLIAN. Well, the biggest problem we have is that we have a viable plan, if the Federal Government does its part and that is trading the property to obtain the property necessary to create the preserve.

Again, it is a hugely difficult issue, because the Federal Government—we agreed on an appraisal process. We agreed on an appraiser; in fact, it came from their list. The appraiser appraised the property, \$80 million for the private property, not the state. That was a separate process, and now they don't want to do it because the number is too big.

It is a very difficult process, but they insisted even in that process that we devalue the people's lands for the effect of the listing, and we just don't think that is right.

Mr. HANSEN. I am sure that our two members here have given up other things to be here. I am supposed to be down at the White House, but this is fascinating information.

Before we wind this up, any member of the panel have anything else you would like to say?

Mr. Gallian.

Mr. GALLIAN. There were a couple of points, very quickly, that I don't hear talked about a lot, and that is captive propagation. It seems to me it should be encouraged by this body.

We have found that as we bring that issue up, and we have brought it up many times in our process, it is rejected out of hand, like what do you mean. The fact of the matter is that it works, and I think the reason they reject it is they know it will work and will lead to the delisting of the animals.

What I am talking about, in our particular case, is that science has shown that 90 percent of the wild eggs are basically eaten by predation. If you would capture those eggs and incubate them and grow them, you could get a much higher success rate. In fact, the BLM did just that prior to listing the species. They stopped doing it when it was listed.

In the Cayman Islands, they brought back the sea turtle, which is a similar situation, from the brink of extinction to the point where they got tens of thousands of them now through a commercial operation. That is now highly criticized by the environmental community, but nevertheless, it brought back within a period of 15 years, brought back from the brink of extinction a species that was almost lost to the point they have tens of thousands of them now through utilizing a commercial operation.

There is no reason why these kinds of things shouldn't be done.

Mr. HANSEN. What is the scientific evidence that the desert tortoise are native to Washington County?

Mr. GALLIAN. Well, the problem is that nobody knows for sure how they all got there, but we do know that most of them in our development area were carried there as pets, which makes it all the more cruel.



The Fish and Wildlife Service takes the position that it doesn't matter how an animal gets to a piece of property. If it is there, that is its home, that is its habitat.

In our particular case, we believe most if not all of them in our development area were brought there as pets. There is no evidence to show how they got there other than that way, and we have a lot of evidence that they got there that way.

Mr. HANSEN. It is interesting to note that you will find some of those in that area, that there is a hole drilled in the shell.

Mr. GALLIAN. Right.

Mr. HANSEN. When we were all kids, we could buy them at a gas station for \$5 or \$2 and everyone had one. It was kind of an in thing to have a desert tortoise in that area, and you still see them with the holes drilled in the shell, and I don't know where they came from.

Any further comment from any of you folks? We are willing to take another minute.

Mr. VINCZE. Just one comment that goes along with propagation, private propagation of species.

I think that you need to open up the Endangered Species Act for commercial propagation. Now, does this mean that you reintroduce these species, these propagated species, artificially produced, back into the environment? Perhaps, but if you don't because you want to maintain the quality and integrity of an ecosystem for example, offered by the Fish and Wildlife Service's argument, what you can do in a lot of cases is relieve the pressures for poaching, for example, in the wild of certain plant species especially.

This can be a very significant program. In fact, you look at some of the success stories in the Endangered Species Act and how they occurred. Look at the crocodile, rather the American alligator down in Florida. All private efforts. Now, you can buy belts and shoes again. It was a valuable resource that was being poached and it went to an endangered status. You commercially propagate it, you relieve the poaching, because it is less expensive to buy it through commercial sources, and then the species is no longer in danger. Thank you.

Mr. HANSEN. I want to thank the panel for their testimony. I wish we could have been here the entire day and heard it all, but we all have a dozen other things to do, and on behalf of the Resource Committee, this meeting is now adjourned.

[Whereupon, at 2:45 p.m., the subcommittee was adjourned; and the following was submitted for the record:]

**Testimony of Cindy Domenigoni**  
**Before the U.S. House of Representatives,**  
**Committee on Resources**  
**Honorable Don Young, Chairman**  
**March 20, 1996**

Thank you, Mr. Chairman, for allowing me to appear before you today. I also want to thank you for allowing Mr. Rowe to accompany me to provide additional information for you. Our family owns a 2,500 acre cattle ranch and grain farm in Winchester, California. Our son is the fifth generation to work the land that my husband's ancestors settled over one hundred and twenty years ago.

I come before you today, with a rising amount of frustration, a good bit of indignation, and a healthy amount of anger. As I have testified on two previous occasions, our farm has been seriously impacted by the "endangered" listing of the Stephens' kangaroo rat. We have been stopped from farming parts of our land. We nearly lost our lives and all of our cattle in a devastating fire exacerbated by these prohibitions. And now, after simply standing up and telling our story, we have been unjustly attacked, impugned, and essentially called liars.

What is most enraging to me is that, the Department of Interior has been using my tax dollars to spread misinformation about our story and to question our character.

Since I have provided testimony on the ESA before, I will briefly outline the impacts of the Endangered Species Act on our farm operation and our lives, and then speak to the government's added insults to our injury.

**I. Impact of the Endangered Species Act on Our Farm**

In 1990, without our knowledge or consent, over 1,600 acres of our ranch were placed in a reserve "study area" as part of a Habitat Conservation Plan for the Stephens' kangaroo rat, under section 10 (a) of the Endangered Species Act. We later discovered private biologists illegally trespassing on our ranch. These biologists then returned with a U.S. Fish and Wildlife Service biologist and an armed law enforcement officer. We were later informed that our planned preparation of over 800 acres of our farm for grain planting would constitute an illegal "take" of the kangaroo rats that they said were found inhabiting our fields.

Because our property is in a reserve "study area" we are not allowed any incidental take. We would only be able to legally take kangaroo rats if we went through a very expensive and lengthy "Boundary Modification" process, asking for the removal of this designation from our property. The Riverside County Habitat Conservation Agency, California Department of Fish and Game, and the U.S. Fish and Wildlife Service would all have to sign off, allowing our property out of the study area, after we had paid for extensive surveys, a per acre "processing fee," and a flat fee for the privilege of requesting that our property have this designation that



we never asked for, removed. Our Boundary Modification application has been pending for over three years.

As a result of shutting down our ability to farm that property, we incurred over \$75,000 in lost income for each of the three years that we were unable to grow grain there. We have also spent over \$175,000 on legal fees, biological surveys, and other related costs. Our costs total over \$400,000 in lost income and direct costs because of the impact of the Endangered Species Act. These costs do not include thousands of dollars in damages to our fences and equipment that occurred during the California Fire of October 1993.

## II. USFWS's Smear Campaign

After this disastrous fire of 1993, I was interviewed as part of the GAO investigation into the effects ESA prohibitions had on the damage caused by the fire. We had hoped that the GAO would take a fair, objective look at the information we provided them. However, it later became apparent that the GAO was not interested in finding out the truth about what happened in Riverside county. Rather, the GAO was more interested in providing the defenders of the ESA status quo with a false "study" they could wave in front of the media and call it the definitive word on the fire whose publicity had so damaged the mythical image of the Endangered Species Act.

As if this was not enough, we have since found that the GAO report is being used to attack our family personally, and to attempt to portray those who lost their homes in this tragedy as either misguided or untruthful. Who are exaggerating the ESA's exacerbating effect on the damage caused by the fire.

Last year, I was shocked to learn that I was targeted in a smear campaign waged by the U.S. Fish and Wildlife Service against individuals who have spoken up about injury they had suffered from implementation of the Act. We received a document titled, "Facts about the Endangered Species Act." One whole chapter in it is devoted to casting me and ESA victims who have had the courage to speak out in public as liars.

In the first portion of this document, the Service trumpets the "success stories" of species they claim owe their recovery to the Act. This portion of the "Fact" sheet proudly lists names and contact telephone numbers for Service personnel, and state wildlife agency personnel. It would have taken us one telephone call to get additional information about these "Endangered Species Act Success Stories."

The "Fact" sheet attempts to unjustly cast as lies the stories of many of the people who have been seriously abused by this Act. They obfuscate and mislead the truth by creating several "strawmen" accusations. Under the heading of "The Allegation," they create outlandish charges that the ESA has done or caused things that no one has ever accused the Act of doing, the Service is then able to easily refute these untrue "allegations" that were never actually made.

Yet, also contained in this document were vicious attacks on numerous individual citizens who have had the courage to speak out publicly about the impacts they had suffered. These attacks were couched in the section titled, "The Endangered Species Act: The Rest of the Story." But in this section of the "Fact" sheet, the Service had no contact people, no telephone numbers, no authors or attribution anywhere. The Service obviously thought they would be able to publish this document, and no one would ever wonder where it came from.

Wasn't the Service worried that its distortions of fact, twists of real allegations, and construction of strawmen might cause those they maligned to fight back? Why didn't the Service stand behind this scandalous document? Why isn't it published on government letterhead? I believe the answers are obvious. The Service feared legal liability for printing blatantly false and hurtful accusations about the ESA's victims. I believe the Service also lacked the fortitude to stand up after launching this salvo.

### **III. The Department of Interior Attempts to Hide From Scrutiny**

When we sought to find out the sources of the information used in the document, it took not only numerous unsuccessful phone calls, but also a formal Freedom of Information Act Request ("FOIA"). This FOIA request also required numerous telephone calls, and an additional FOIA Appeal in order to get any of the information that the Service relied on for the "allegations" and "responses" in the "Rest of the Story" section.

We submitted our FOIA request in October 1995. It was followed in December by a denial of our request. We filed an appeal on December 26th. That was answered with a partial reply that is still woefully incomplete. We still have not received all of the information we requested.

In our official request for information, we asked eighteen specific questions, seeking the sources for the statements contained in the document. The first response by the Department of the Interior tried to absolve itself of any responsibility for the statements it made in the "Fact" sheet by stating that the Office of Public Affairs for the Service was, "not the office of record" for the documents they themselves used in making the statements. They improperly refused to supply the papers to us.

We appealed this determination by the Department, and their second answer came on February 14th, still largely incomplete and unresponsive. Of our eighteen questions, the Washington Office of Public Affairs, (the place where the document was published) referred us to the Regional Director's Office of the Fish and Wildlife Service in Portland Oregon, for nine of our questions. The Regional Director's Office still has not responded. The response then referred to a "pop up card" published by a group of labor interests for three of the questions, then cited the General Accounting Office report on the fire as the source for three more questions. A printing requisition form was the answer for one question, a National Wildlife Federation "document" for another, and, incredibly, they even cited my own Congressional testimony as one "source." We were shocked!



Their response to our request for the persons responsible for developing and distributing the publication was a printing requisition sheet, and printing invoice, all referencing "Mark Newcastle, Printing Specialist."

First the Service nearly drives us out of business with its prohibitions stopping us from farming our own land. Then it nearly cost us our lives and our home and our cattle by forcing us to abandon safe fire prevention practices, then they attack us for simply telling what happened. Then, to top it all off, the Service uses my own testimony, and while knowing the true facts of the matter, blatantly and unrepentantly attempts to discredit and impugn my family and me. All the while using my tax dollars to accomplish this.

The most telling aspect of the response to our FOIA request is that the Service apparently has nothing to back up its "responses" that attempt to refute the stories. The information we received in response to our FOIA Appeal indicates that the Service was aware of the true facts. However, it chose to ignore some and misrepresent others in the publication. They also try to create false impressions by glaring omission, such as not mentioning the prohibition placed on us lasted for three years.

We also found out that the document is regularly updated and widely distributed. One of the few documents actually disclosed to us is a printing requisition with instructions for distributing 2,500 copies of the May 1995 edition of the "Fact" sheet from the Washington office. We have since seen that there is a June/July 1995 edition circulating.

I previously testified that the Service prohibited my family from farming 800 acres of land that we have farmed for over 100 years due to the presence of the Stephens' kangaroo rat ("SKR"). The publication attempts to cast doubt on the financial injury my family has suffered by calling it a mere "allegation." The Service has copies of my testimony, and no facts contradicting my testimony, but that didn't stop them from "responding" in the publication.

The Service's response falsely suggests that I inflated the acreage my family was prohibited from farming. It also fails to disclose that the Service's prohibition against our farming was in place for over three years. The three years we were prevented from farming our 800 acres was when the loss of crop income occurred in the amount of about \$75,000 per year. Yet the Service, in a clear and calculated omission, first asserts that it is not "familiar" with 800 idled acres. They then follow with the statement that the property was allowed to be farmed again, totally omitting the fact that the land was idled for three years.

The next statement in this document is very curious, yet also very revealing. The "Facts" document states that the property was allowed to be farmed again when, "A Service biologist subsequently determined that the land in question was not k-rat habitat."

There are several points I want to make about this statement. First, it is blatantly misleading to use the word "subsequently." This word implies a direct, responsive action, taken in some sort of timely manner, (which was obviously the impression the Service sought to leave with the reader.) However, "subsequently" is not an accurate word to use when it took over three years for the Service to "examine" our property when they found it not to be k-rat habitat.

Second, in the intervening time, (after the Service personnel told us we could not farm the field in 1990) a Service biologist *had* examined our field, in June 1992. It was examined by a Service biologist after we had pleaded with the agency to allow us to disk a fire break in order to protect the safety of our neighbor, Mr. Rowe.

Mr. Rowe had sent us two letters asking us to remove the vegetation and brush that had built up over the previous five years (two years of fallowing preceded the three year ESA prohibition on the field) we were not farming the property next to his small farm and home. He legitimately feared that, should a fire come, he would be in great danger of losing his home from the amount of fuel that had built up so close to his property.

At that time, (and this is recorded in letters to us and Mr. Rowe from the Service) the biologist had found evidence of Stephens' kangaroo rats. That was the stated reason the Service was prohibiting us from disking the fire break. They told us not to disk the fire break, and they offered their own solution, that we mow a fire break. The Service biologist responded to our protests that the mowing machine would be a hazard itself in that area, (numerous fires are caused by mowers' hot exhausts or their blades striking rocks every year in California) and our position that the left over dead thatch would present an even more severe fire hazard, by telling us to hire a water truck (to wet the brush) and a hand crew to clean up the thatch. Obviously, this biologist had never tried to mow his lawn in the rain, let alone 800 acres.

Third, after the fire in October 1993, my husband and I examined the land ourselves and found no evidence of k-rats on the area that had been cited as occupied habitat for the previous three years by the Service. We then sought to have the Service reexamine the land to tell us if it would be all right for us to farm it again, since there were no k-rats left on the property. After his examination and his verbal go ahead to us, the Service biologist was attributed in our local paper with saying that it wasn't the fire that caused the destruction of the k-rats and their habitat. Rather, while we were under orders not to farm the land by the Service, the brush and weeds in the field had grown too thick for the k-rats' preference, and they had simply left the area, long before the fire occurred.

This attribution was later denied by the Service, for obvious reasons. It shows that in their infinite wisdom, the agency charged with protecting this species had actually caused an area that had been used for farming and for habitat for over a hundred years, to be both unsuitable for the k-rats and unproductive for us.

Obviously, it does not help the Service's reputation as wise stewards and benefactors of endangered species for this statement to stand. That is why they quickly distanced themselves from the statement after it appeared in the paper. Yet, in a typical about face, it appears that they have relied on it to smear us in a twisted manner in this document.

This is evident in the Service response that the land was "subsequently" found not to be k-rat habitat. They are again relying on the examination after the fire in 1993. If their position was that the fire had been the cause of the k-rats' disappearance, they would have to state so in their response.



Further evidence that the Service is reverting back to its position that the land was "not k-rat habitat" is found in the Department of Interior's response to our request under FOIA. In their response to our query about the source of the information for the statement that the Service biologist had found the area not to be habitat, the Department of Interior's FOIA response cites "conversations" with Service personnel in the Carlsbad field office, the Service's base for our area. Yet the "Facts" document never mentions the examination by the Service biologist in June of 1992, where he cited the presence of k-rats as the reason for the prohibition on disking fire breaks. Mention of this examination would reveal to the reader that the property had been inhabited by k-rats, and idled for at least eighteen months. This would not have kept with the impression they desired to leave by choosing to use the word "subsequently" in their response to the fact that they order farming stopped on the property.

Evidence proving the facts I have provided is contained in the paper titled, "Fire Protection, the Public and the Endangered Species Act." The report was compiled by the Golden State Resource Management Group, and contains the letters from the Service citing the presence of the k-rats in June of 1992, and the news article attributing the Service biologist with stating that the k-rats had left before the fire in 1993. I asked that this report be entered in the record of proceedings when I testified at a hearing of the Endangered Species Task force held in Riverside, California in April 1995.

The Service's publication also targets other property owners like me, who have testified before Congress and who were interviewed by the GAO.

#### IV. Top Fire Official Disagrees with GAO Findings

The Service selected statements from the GAO report that deflect criticism of its irresponsible prohibition against disking of fire breaks instituted as one of its Stephens' kangaroo rat protection measures.

As a result of the Service's prohibition on disking, and the fact that their alternative of mowing was in itself dangerous, likely to cause a fire, and also totally impractical. Brush in the fields where we were stopped from farming became overgrown and few fire breaks were accomplished at all in the habitat protection area. The ones who had level land with few rocks to cause sparks from a fast moving mower blade, and chose to use the Service's alternative, were left with an incomplete and ineffective fire break.

Riverside County Fire Chief Mike Harris also testified before the Task Force in Riverside. There he stated that, "Both California state law and Riverside County ordinances require the removal of flammable vegetation to *bare mineral soil* around all homes and improvements. The intent of these laws is to break the unobstructed travel of fire from a wildland area into the structures or from the structures into the habitat. These laws and ordinances have proven effective over the years at providing a reasonable and prudent level of public safety." [emphasis added]

Fire Chief Harris continued, discussing the Service's prohibition on disking fire breaks, stating:

" There were three major impacts from these actions:

1. The fire service lost a very valuable public protection tool.
2. The regulations caused confusion on the part of government officials and the public, leading in some cases to inaction.
3. *The lack of proper hazard reduction contributed to the loss of homes and other improvements during the California fire.*" [emphasis added]

Chief Harris continued, "The General Accounting Office's report on the California fire concluded that the lack of hazard reduction activities had no impact on the losses caused by the California fire. I do not agree with their conclusions."

Later, during the question and answer period of the Task Force hearing, Chief Harris discussed another Riverside County fire that occurred in 1993, about one week after the California fire, under similar weather and wind conditions. However, Chief Harris noted that there were some significant differences between this fire, the Repplier fire and the California fire. First, there was a "much higher fuel loading" on the Repplier fire. Second, there were no (ESA) prohibitions on hazard reduction clearance, (disked fire breaks were allowed, and present). And third, there were only four homes lost in the Repplier fire, significantly fewer than were lost in the California fire where the disking prohibition was in place (even though many more homes were at risk in the path of the Repplier fire).

For those homeowners who followed the Service's edict and mowed their fire breaks, Chief Harris provided a stark visual picture of the difference in the effectiveness of mowed fire breaks versus disked fire breaks:

"I can make a quick example here, if we assume this piece of paper is a structure and we provide a [disked] fire break so the direct flame impingement is out here somewhere, [Harris placed his hand several inches away from the paper] you do not have to be a rocket scientist or the fire chief to figure out that that is [sic] less potential for loss of this home than if you put that flame right here." [Harris at this point placed his hand in contact with the paper he was using to symbolize a home with a only mowed firebreak having direct contact with flames from a wildfire.]

The fire chief also agreed with the other residents and us in that, had our 800 acres been actively farmed at the time of the fire, the fire's intensity would have been greatly reduced.

Included with my testimony are two maps depicting the habitat protection area, our property (including the areas we were not allowed to farm), Mike Rowe's residence, the origin of the fire, and its direction of travel that first night. Also depicted on these maps are representations of each of the 29 homes that were destroyed. We were not able to show you where all of the 107 other destroyed structures were located. I hope each of you will take a few moments to examine these maps, and I request that these maps be entered in the record.

#### V. Maps and Photos Clearly Show Impact of Regulations

While examining these maps, keep in mind that the 800 acres that were subject to the farming prohibition, would have been either grazed off grain stubble, or completely denuded of any



vegetation at all. That area might have been disked completely at that time of year, in preparation for the next year's crop planting.

Despite statements in the GAO report such as "the entire U.S. Army could not have stopped this fire," with just a few yards of disked firebreaks, and our normal agricultural practices, many of the homes could have been saved. I must remind you that my husband and I were out during the height of the fire, herding our cattle out of its path, and into safer pastures. We were able to survive the fire burning all around us, as we huddled with our horses and our cattle in a tiny seven acre field that we had farmed that year. Had the entire 800 acres been farmed as well, others might have been more fortunate with their own homes and property.

Bear in mind that in the nearly one hundred and twenty years this area has been farmed, we had never had as large or as damaging a fire as this one. The fires in the past had always been contained to minimal acreage burned, and minimal damage due to the patchwork landscape effect from our agricultural practices.

Because he was fortunate enough to have warning and a ready tractor, Michael Rowe saved his house by cutting the fence between our properties and disked a fire break before the fire made its way to his home. Yes, he was fortunate, his home stands today. His home is standing because of the action he took, not the "capriciousness" of the fire or the "shifting winds" in the GAO's version of events.

I have also brought photographs of the area as it looked this past December 1995. Because of the fire and the Service's newly found flexibility that allows us to disk fire breaks, you will see good sized disked fire breaks in these photos of our property and Mr. Rowe's property. You can see that our field has only an inch or two of widely spaced grain stubble that has been grazed by our cattle. This is hardly enough fuel to keep a fire burning at all, much less the raging inferno that occurred in 1993.

Another photo shows our farmed property, and some vacant property owned by the Riverside County Habitat Conservation Agency, as part of the Stephens kangaroo rat reserve area, which also burned in the fire. As you can see, in just two short years the growth of brush and the amount of dead, flammable vegetation is already enormous. You can just imagine what the area that we are now able to farm was like after having more than five years growth of this brush on it.

## **VI. Congress Must Take Action**

Clearly, the Service has attempted to capitalize on the GAO report's conclusions by absolving themselves of any wrongdoing, holding up this misleading red herring, all the while calling it the oracle from on high. They have used it to add repeated insult to injury to myself, my family, Mr. Rowe, and the rest of the victims of this terrible tragedy. Yet they continue to backstab and impugn honest citizens seeking redress of these government wrongs. Their lack of remorse is evident in their blatant disregard for the facts, even when the facts are in their possession as in this case. They make up lies and distortions, create favorable impressions for themselves through glaring omissions, and then thumb their nose at the people who try to find

the source of their information through the processes set up by Congress for gaining access to information.

The Service's publication is another indication that, despite its rhetoric, the Department of the Interior is not interested in working to implement the ESA in a manner that "avoids train wrecks" between species regulations and property owners. Quite the contrary, it appears the Department works very hard to deny the wreck ever happened.

Without Congressional remedy to the Endangered Species Act, the Service will continue to issue edicts, citing the Act as its authority, with no regard for the legitimate interests of safety, health, the privacy of individuals, and their Constitutionally guaranteed rights.

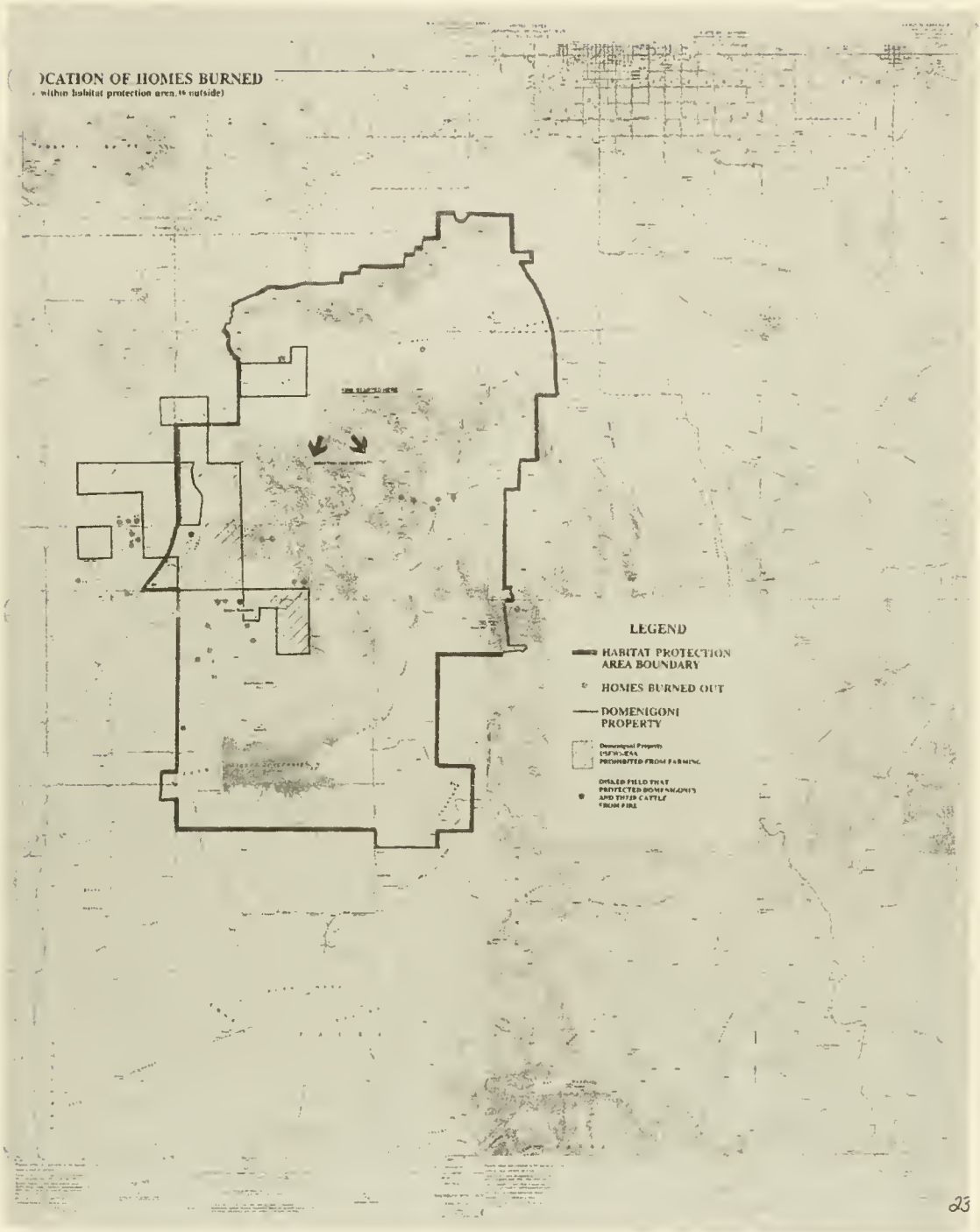
It is incumbent upon Congress to investigate the abuses caused by the publication of this document. "Facts About the Endangered Species Act." Why isn't it attributed to the Department or the Service? Who wrote it? Why aren't there contact persons mentioned in the "Rest of the Story" section of the document? Why did the Service make up phony allegations in order to easily refute them, thus casting suspicion on the whole of the story? Why did the Service ignore the true facts when it had them in its possession? How many other people are being abused by their government a second or third time by this document?

This last point is the most important point to me. I sit before you today, just one of the people whose character has been assassinated by the mistruths published in this document. Michael Rowe, accompanying me, is another. Mrs. Rector, also testifying, is another. How many more people discussed in this document have been so seriously abused and mischaracterized?

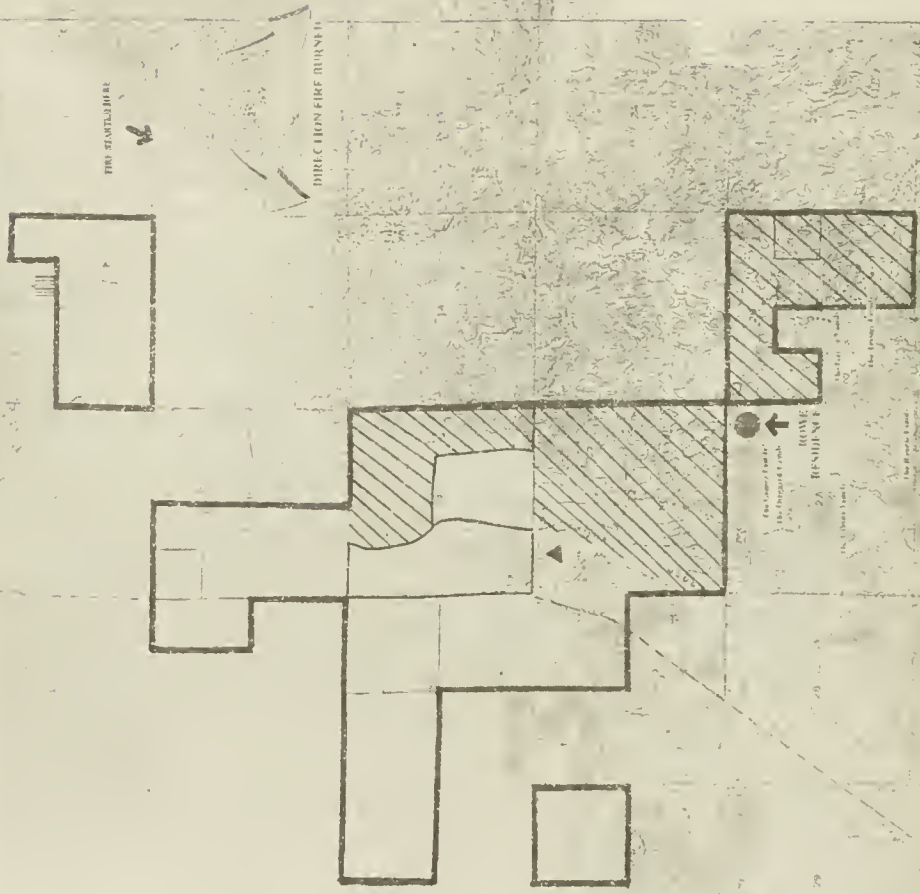
That is why it is imperative that you initiate an investigation into these issues surrounding this document today. Your action in doing so will be a first step in righting this egregious wrong by our government. I hope you will see to it that the light of day floods every dark corner that hides the truth about this. The document is nothing more than a thinly veiled effort to undermine the sensible reforms and redirection you are attempting to achieve in reauthorizing the Endangered Species Act for both the species it seeks to protect, and the people it affects every day.

It is also an example of the one of the many ways that the U.S. Fish and Wildlife Service is abusing the broad authority given it under the Act. We urge you to stay the course in reforming the Act to reign in the abuses and give strict guidance to the agencies responsible for enforcing this law. You must change the specter of fear landowners now have of both the federal agents and the presence of the species that cause landowners to have to deal with them. That is the only way the Endangered Species Act will ever change from a disaster and a failure, to a true success story. Thank you.





**OMENICONI PROPERTY**  
Riverside County, California



**LEGEND**

HOMES BURNED OUT

DISKED FIELD THAT PROHIBITED CINDY AND THEIR CATTLE FROM THE FIRE

PROHIBITED FROM FARMING

HARVEST PROTECTION AREA (WEST BOUNDARY)







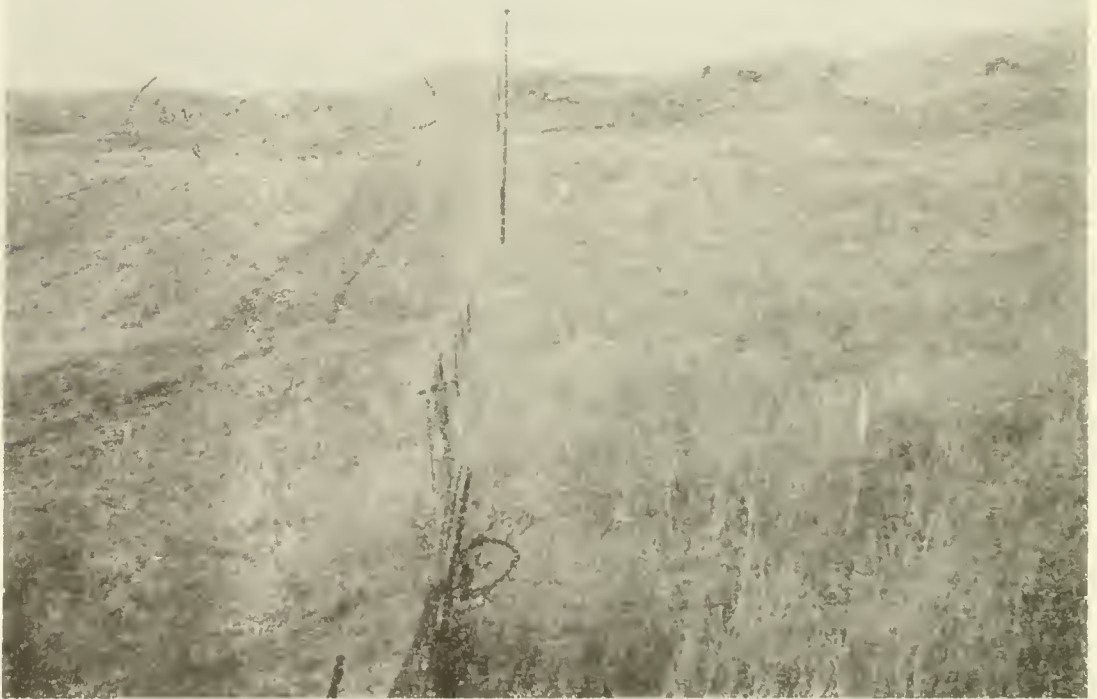
WINCHESTER AREA, DECEMBER 1995, SAN DIEGO CANAL



WINCHESTER AREA (NEAR ROWE PROPERTY) DEC. 1995  
Home in foreground survived fire. Disked heavily.



DOMENIGONI RANCH/ROWE RANCH, DECEMBER 1995. View from Rowe's house, north, with firebreaks on each property. Rowe house on left, Domenigoni on right.



DOMENIGONI RANCH, DECEMBER 1995

Domenigoni property on left, property owned by Riverside County Habitat Conservation Agency and part of the K-Rat Reserve. On left was barred from farming until after fire. In October 1993, both burned. Growth on right is after 2 years.





# **Facts about the Endangered Species Act**

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(Rev. June/July 1995)

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# **Facts about the Endangered Species Act**

- I. Endangered Species Act At A Glance
- II. Endangered Species Act Success Stories
- III. Endangered Species Act: The Rest of the Story

## **Texas: The Fountain Darter and the Military**

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### ***The Allegation***

Restrictions under the Endangered Species Act for the fountain darter are negatively affecting military installations in Texas.

### ***The Response***

The fountain darter, a small fish, inhabits surface waters dependent upon the Edwards Aquifer for their instream flows. Several military bases in the San Antonio area have relied upon Edwards Aquifer water for years. The military bases' withdrawal amount is roughly 3 percent of the total withdrawn from the aquifer. Recently, the installations have been voluntarily incorporating water conservation measures and seeking alternate water supplies due to general concerns that overall aquifer withdrawal levels have been greater than recharge levels. The U.S. Fish and Wildlife Service has encouraged the military installations to evaluate what effects their water withdrawal may have on federally-listed species dependent upon the Edwards Aquifer, including the fountain darter. The military has consulted with the Service on several new and amended missions and none have been stopped. The Service continues to encourage the military to examine potential base-wide effects to federally-listed species and to review means by which any identified effects can be minimized. Because of the proactive approach the military is using, the Service anticipates that military water needs can continue to be met without negatively impacting the resources of the Edwards Aquifer.

## **Texas: The Dream House**

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### ***The Allegation***

The Wall Street Journal described the case of Marj and Roger Kreuger, who spent \$53,000 on a lot for their dream house in Texas Hill Country. But they and other owners were barred from building because the endangered golden-cheeked warbler was found in the canyons adjacent to their land.

### ***The Response***

The Kreugers, and others, purchased lots in a subdivision near Austin on land that was golden-cheeked warbler habitat. Landowners like the Kreugers, who qualify for the streamlined Habitat Conservation Plan process recently instituted by Secretary Babbitt, can receive a permit within 45 to 60 days from the time of application. Should they elect to begin construction, they must then pay a \$1,500 mitigation fee, which goes to a fund used to manage warbler habitat. At least 17 such landowners have applied under the program and are expected to receive permits soon. There is no record of the Kreuger family filing an application.



## Tennessee: Columbia Dam

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### *The Allegation*

The Tennessee Valley Authority (TVA) began construction of a 12,600-acre dam in 1973. By 1983, the TVA had spent \$84 million but was forced to halt construction because of a listed mussel and plant species. The dam is not complete and TVA has no plans to finish it.

### *The Response*

The construction of Columbia Dam, begun in 1973, was halted in 1983 when it became apparent that the reservoir could jeopardize the existence of two endangered freshwater mussel species. Since 1983, two additional endangered mussels and one endangered plant have been located in the project area. When the project was stopped, TVA had spent \$84 million on the dam, finishing 90 percent of the concrete portion and 60 percent of the earth and rockfill portion. Conservation measures were agreed to by the U.S. Fish and Wildlife Service that would have made completion of the dam possible, but TVA eventually elected to abandon the project altogether. However, the Service continues to work with TVA to explore alternate reservoir sites. TVA anticipates finishing an Environmental Impact Statement in the Fall of 1995 on one location that would seem to satisfy all the water requirements and have no adverse impact on endangered or threatened species.

## The Squawfish

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### *The Allegation*

People are paid to catch squawfish in the Columbia River while at the same time, \$150 million is being spent to recover the species in the Colorado River.

### *The Response*

The squawfish in the Columbia and Colorado Rivers are distinctly different species, the northern squawfish (*Ptychocheilus oregonensis*) being a resident of the Columbia and living in clear water and averaging 13 pounds, and the Colorado squawfish (*Ptychocheilus lucius*) inhabiting the Colorado and living in warm, turbid water and averaging 70 pounds. The predator removal program on the Columbia is an outgrowth of studies in the 1980s, which found that 80 percent of the known juvenile salmon predation was attributable to the northern squawfish. Since 1990, nearly 600,000 squawfish have been removed from the Lower Columbia and Snake Rivers, which lowered the predation rate on juvenile salmon 31 percent by 1994. It is believed that the predation rate may be reduced by 50 percent or more within 10 years. The program, considered highly successful and now an integral part of the salmon management efforts in the Columbia Basin, rewards all sport fishermen for northern squawfish over 11 inches in length. They are paid \$3 per fish for the first 100, \$4 for the next 300, and \$5 per fish over 400. The Bonneville Power Administration funds the program, which is administered by the Pacific States Marine Fisheries Commission in cooperation with the Washington and Oregon Departments of Fish and Wildlife. BPA has provided \$5.4 million annually since 1993 (\$8 million a year from 1990 through 1992). The program has been approved under the endangered species program of the National Marine Fisheries Service to protect depleted salmon stocks. The Colorado squawfish recovery plan, approved August 6, 1991, identifies \$3.2 million for 1992-1997 and a total of \$53 million to recover four fishes (Colorado squawfish, bonytail chub, humpback chub and the razorback sucker) in the Colorado River system.

**California: The Fly and the Hospital**

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***The Allegation***

Construction of a \$600 million hospital in Southern California was halted by eight flies. The hospital had to dedicate 40 percent of the site to permanent fly habitat on the hospital grounds to proceed with the project.

***The Response***

Hospital construction, in Colton, California, was never halted. An agreement was reached with the developer regarding the Delhi sands flower-loving fly before construction began. The developer agreed to set aside 10.27 acres as a reserve for the species. The hospital site is 76 acres in size, and the habitat constitutes 13.5 percent of the total acreage. Construction remains underway. (The Delhi sands flower-loving fly, in a family different from that of the common housefly, is orange-brown in color, approximately an inch in length and has dark brown oval spots on the upper abdomen. It is found in five locations in southern California and prefers fine, sandy soils. It is an important pollinator of flowers, and its movement in flight is similar to that of the hummingbird).

**Washington: One Owl Gets Your Land**

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***The Allegation***

The Constitutional interpretation right now is that if an owl flies and lands on your land, that owl gets all of your land and you are not compensated.

***The Response***

The U.S. Fish and Wildlife Service does not, and cannot, take property from a landowner because an owl lands there.

**Texas: Species Halts Logging**

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***The Allegation***

A \$100,000 logging operation north of Houston was halted due to an abandoned bald eagle's nest.

***The Response***

An active eagle nest was discovered amid timber that was to be logged on land north of Houston, worth approximately \$100,000. Upon inspection, U.S. Fish and Wildlife Service biologists recommended—but did not order—that the owner of the logging operation set aside a percentage of the stand. The owner complied voluntarily and proceeded to log the remaining stand of timber. The Service has pledged to revisit the logging operation each year to help the owner determine what, if any, further logging may be implemented. (Bald eagles and their nests, eggs and young are protected under the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act, as well as the Endangered Species Act).

**Arizona: The Flooded Road**

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***The Allegation***

A road in Greenlee County, Arizona, was flooded in November 1994. When the county tried to repair the dirt road, the U.S. Fish and Wildlife Service threatened a daily fine of \$20,000 if work continued.

***The Response***

The dirt road, which crosses a stream bed in several locations without benefit of bridges, was washed away in at least one location. When the Arizona governor declared an emergency, the U.S. Fish and Wildlife Service immediately conducted an emergency consultation and advised Greenlee County authorities to proceed with necessary repairs, requesting only that workmen spend as little time as possible in the stream bed. The road was repaired. The U.S. Fish and Wildlife Service made no threat of a \$20,000-a-day fine.

## **Kansas: Neosho Madtom Catfish Shuts Down Business**

### ***The Allegation***

In Kansas, the Shepard family had spent over 100 years, or three generations, scooping gravel near the Neosho River. Regulators went mad about the madtom catfish. They shut down the Shepards because the madtom inhabited the Neosho River and they thought the fish might be threatened, so the Shepards' gravel scooping days were over.

### ***The Response***

The State of Kansas listed the Neosho Madtom catfish as threatened, and also listed critical habitat for the species, under the Kansas Endangered Species Act, in 1978. The State of Kansas subsequently halted gravel scooping operations until state and federal biologists could determine what, precisely, is needed to recover the fish, which inhabits gravel areas in streams where it spawns and feeds. Alternate sites continued to be available to be worked by private operators for gravel recovery. The U.S. Army Corps of Engineers now has jurisdiction over gravel removal activities in the Neosho River and the State of Kansas has since lifted its gravel removal moratorium. Mr. Shepard and other gravel operators have applied for the necessary permit from the Corps of Engineers. The Corps will consult with the U.S. Fish and Wildlife Service as required under the Federal Endangered Species Act. The Service listed the Neosho Madtom catfish as threatened in 1990.

## **California: Home Destroyed By Federal Regulators**

### ***The Allegation***

When Michael Rowe, of Winchester, California, saved enough money to add an extension to his 1-bedroom home on his 20-acre ranch, he found he was in a Stephens' kangaroo rat study area. He could have hired a biologist for \$5,000—but if he found a single rat, the addition still would be illegal. If no rats were found, he then would have to pay the government \$40,000 for a rat reserve elsewhere. In essence, the home was destroyed by federal regulators before it left the drawing board.

### ***The Response***

Stephens' kangaroo rat study areas were areas established within part of a short-term Habitat Conservation Plan (HCP) established by the Riverside County Habitat Conservation Planning Agency; the county agreed not to grant grading permits within study areas, unless a biologist demonstrated that no Stephens' kangaroo rats inhabited the area. In the case of Mr. Rowe's property, the cost of hiring a biologist would not have cost \$5,000, but \$500; a U.S. Fish and Wildlife Service agent offered to conduct the study for free, but Mr. Rowe declined the offer. The mitigation fee, for the Stephens' kangaroo rat reserve, was established in an agreement under the HCP. The fee—\$1,000 (not \$40,000)—goes to a reserve acquisition fund. Mr. Rowe's home, which is still occupied, was not destroyed.



## Michigan: A Fee Or A Fine

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### *The Allegation*

A farmer was told he would be allowed to return to farming if he gave the government one square mile of his property and a mitigation fee of \$300,000. When the farmer refused this offer, he was fined \$300,000. That was 10 years ago. The farmer is still fighting.

### *The Response*

U.S. Fish and Wildlife Service law enforcement agents in Ann Arbor and the Field Supervisor in East Lansing, who deal with all of Michigan, recall no such case. The choice of a fee or a fine by a court seems highly unusual. The only scenario may involve something to do with an easement, which in any case would not involve threatened or endangered species.

## California: Farmer Fined, Loses Land

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### *The Allegation*

A farmer in California, to avoid jail, reached agreement with the U.S. Fish and Wildlife Service to pay a \$5,000 fine, surrender 60 acres of his 160-acre farm and then ordered by the court to sell the remaining 100 acres. Why? He had plowed his field and there on his property was apparently some sort of lizard that the Service had deemed threatened or endangered.

### *The Response*

This case involved an agribusiness concern, Tule Vista Farms and the incident in question occurred in 1989. It was not adjudicated until 1994. The Tule Vista Farms investigation was initiated jointly by the California Department of Fish and Game and the U.S. Fish and Wildlife Service when a state biologist noticed that 160 acres of endangered species habitat had been destroyed by disking. The subsequent investigation and charges eventually resulted in a plea agreement, whereby the Tule

Vista Farms agreed to deed the entire 160-acre parcel to the Service, with 60 acres representing land of value equivalent to compensation, mitigation and fines in excess of \$93,000. The Service purchased the remaining 99.35 acres with money provided by The Nature Conservancy and the acreage then became part of the Pixley National Wildlife Refuge. There was no court order to sell the remaining acreage; surrender of the entire parcel for fines levied and for acquisition was the result of a plea agreement.

## Uncle Sam and 'Takings' Claims

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### *The Allegation*

The U.S. government is facing well over \$1 billion in takings claims. In California alone, property owners who can afford legal costs are winning about 50 percent of their cases and a report by the Congressional Research Service says property owners won regulatory takings cases before the courts in 1990 more often than not.

### *The Response*

The \$1 billion figure represented the total amount plaintiffs were seeking in all pending cases alleging takings by the United States, whether or not the claims involve land regulation and regardless of the likelihood that a court would find a taking or the amount a court would actually award if it did find a taking. According to the Congressional Research Service, in 1993 the largest single source of decisions addressing takings claims against the United States was federal involvement with failing financial institutions; only a third of 1993 decisions involved land regulation. For 1992 and 1993, the Congressional Research Service reports that the government won 62 of 67 takings cases decided. In 1991, the government won 18 of 23 decided cases, and in 1990, 8 of 14. Only a handful of takings claims based on endangered species protections have been filed before the Court of Federal Claims. The United States has never lost a takings case under the Endangered Species Act.

## **Indiana: A Farmer Loses His Farm**

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### ***The Allegation***

A southwestern Indiana farmer named Bart Dye stands to lose his farmland which has been in his family since 1865. The U.S. Fish and Wildlife Service considers the protection of two species, mussels in a river adjacent to Mr. Dye's land, and the possibility that someday a bald eagle may decide to land on his property—none of which have been sighted—threatens to rob Mr. Dye of the use of his farm and prevent him from ever owning it.

### ***The Response***

The Farmers Home Administration foreclosed on a 982-acre farm in Martin County, Indiana, in 1984. Because of a national Memorandum of Understanding with the U.S. Fish and Wildlife Service, FmHA subsequently requested the Service to evaluate the farm for wetlands and endangered species. Subsequent evaluation showed that bald eagles, Indiana bats, Eastern fanshell mussels and rough pigtoe mussels all resided on part of the land or in a nearby river. The Service recommended establishment of several conservation easements, which consisted of a 10-acre wetland, a forested bluff adjacent to the White River consisting of approximately 255 acres for the protection of the bats and eagles, and two 100-foot buffers along the river. All of those actions resulted in a total of 11 acres of suitable cropland being withdrawn from the total inventory. The original owner, Mr. Bart Dye, has exercised lease-back buy-back rights to the farm. Those rights expire in June, 1996, at which time Mr. Dye must buy the farm or FmHA must offer it for sale to the public. The foreclosure has been through a judicial review and FmHA's actions regarding acquisition of the property have been upheld. The easements will not restrict any future owner's access or use of the farm and the price paid by any future purchaser will be reduced as a result of the easements.

## **California: Fairy Shrimp and Housing Costs**

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### ***The Allegation***

The cost of a house in the City of Roseville, California, is up \$6,000 as a result of the listing of the fairy shrimp.

### ***The Response***

There is a mitigation program involving the fairy shrimp in which developers are required to pay for either restoration of habitat or acquisition, or a combination of both, when the vernal pools that support the fairy shrimp are on land marked for development. The \$6,000 figure is possible if dealing with a single homesite; if considering a large subdivision, the number would likely be much less per home. The mitigation is required when it is apparent that development will cause vernal pools to be filled. That can be avoided, but it can also involve significantly larger parcels of land because the pools are dependent on watershed, which may in turn span a number of homesites. Biologists in California are aware of the vernal pool/development problem, and are trying to help developers work through it.

## **Economics and the Endangered Species Act**

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### ***The Allegation***

The Endangered Species Act has brought development across the country to a halt.

### ***The Response***

Properly implemented and enforced, the Endangered Species Act successfully balances economic needs with conservation needs—as evidenced by the U.S. Fish and Wildlife Service's consultation record. Endangered Species Act listings rarely require a substantial change in plans for development. A 1992 General Accounting Office audit found that of 18,211 consultations between 1988 and 1992, 99.9 percent went forward unchanged or with minor modifications. A Massachusetts Institute of Technology study, "Endangered Species Listings and State Economic Development," completed by Stephen M. Meyer in 1994 for the Project on Environmental Politics and Policy, concluded that "...the evidence strongly contradicts the assertion that the listing of species under the Endangered Species Act has had harmful effects on state economies."

## **Economic Development and the Endangered Species Act**

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### ***The Allegation***

Listing of species under the Endangered Species Act hurts economic development.

### ***The Response***

Between 1988 and 1992, only 6 in 5,000 projects was actually stopped because of the Endangered Species Act. The remainder—99.9 percent—went forward without major changes.

## **Tuna Cave Cockroach**

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### ***The Allegation***

The next thing you know, they'll try to put cockroaches on the endangered species list. Too late. They already have. The Tuna Cave Cockroach is found in Puerto Rico is a candidate for inclusion on the list. At least 40 percent of the candidates for endangered species are rodents, beetles, snails and moths. It will require \$144 million to list and study these candidates. (Source: Timber Industry Labor Management Committee).

### ***The Response***

The Tuna Cave Cockroach is not on the list of Endangered and Threatened Plants and Animals. It is on the candidate list, but the U.S. Fish and Wildlife Service has spent no money on the species. Rodents, beetles, snails and moths comprise 36 percent of the candidates for listing, and it is estimated that the study and listing of all 619 species would cost \$19.6 million, not \$144 million.



## Critical Habitat and Development

### *The Allegation*

When the U.S. Fish and Wildlife Service declares "critical habitat" for an endangered or threatened species, private landowners are prevented from developing their land. Critical habitat designations "lock up" large sections of land, prevent most human activities and are the equivalent of setting aside wildlife sanctuaries. Critical habitat designations prevent all economic development.

### *The Response*

A "critical habitat" designation means that federal agencies must consult with the Fish and Wildlife Service when their activities may adversely modify habitat designated as critical to the recovery of the species. If it is determined that a project will jeopardize the species, the Fish and Wildlife Service is required by the Endangered Species Act to offer "reasonable and prudent" alternatives that will protect the habitat while permitting the project to proceed. More than 99 percent of all projects do go forward. "Critical habitat" designations apply only to actions authorized, funded or carried out by federal agencies. Critical habitat does not affect private landowners unless they plan a development project that requires federal funding, permits, or some other action by a federal agency. A critical habitat designation in no way sets aside an area as a wildlife sanctuary or wilderness area.

## California: The Stephens' Kangaroo Rat

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### *The Allegation*

Ms. Cindy Domenigoni has had more than half of her farm's 3,100 acres of dry land wheat, barley, alfalfa and beef cattle severely impacted by the listing of the Stephens' kangaroo rat. She has been forced to idle 800 acres of her land due to restrictions even though her family has farmed and co-existed with the species for the last 120 years. The federal protections afforded the rat have stripped her of her fundamental property rights, diminished her land values and drained her family's financial resources. She has incurred nearly \$400,000 in lost income and direct and indirect expenses due to K-rat restrictions. (Summary of testimony of Cindy Domenigoni before the House Merchant Marine and Fisheries Committee, July 7, 1993, in Woodland, California).

### *The Response*

The U.S. Fish and Wildlife Service is not familiar with 800 idled acres, but is aware that 400 acres of the Domenigoni farm originally was idled when it was believed that it may have been habitat for the Stephens' kangaroo rat. A Service biologist subsequently examined the land in question and determined that the land was not K-rat habitat. The Service then granted permission to the Domenigoni farm to proceed with farming on the acreage, in December, 1993. Ongoing farming activities in the Riverside County area have not generally been restricted because of K-rat habitat, and farming does not require a grading permit. Grading permits are required for new activities on the land, not continuing activities.

## **Texas: Critical Habitat and the Golden-Cheeked Warbler**

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### ***The Allegation***

The U.S. Fish and Wildlife Service proposed 20 million acres in 33 Texas counties as critical habitat for the golden-cheeked warbler.

### ***The Response***

The Service never had plans for any proposal of the magnitude described above. There is less than 800,000 acres of potential warbler habitat in the entire State of Texas. Secretary Babbitt announced in October 1994 that designation of critical habitat would not be necessary for the conservation of the species if habitat conservation plans were put into place. Work on those plans is proceeding.

## **Texas: Cedar and Private Land**

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### ***The Allegation***

The U.S. Fish and Wildlife Service sues private landowners in Texas who try to control cedar on their property.

### ***The Response***

The Service supports private property rights and has repeatedly said that control of cedar regrowth and ongoing ranching practices do not harm the habitat of the golden-cheeked warbler.

## **Texas: The Widow's Story**

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### ***The Allegation***

In testimony before the Senate Environment and Public Works Committee in April, 1992, a representative of the National Cattlemen's Association told of a widow near Austin, Texas, who wanted to clear her fencerow of brush, only to be threatened with prosecution by the U.S. Fish and Wildlife Service.

### ***The Response***

The woman was advised by the Service that her clearing of a 30-foot wide, one mile-long fencerow might harm endangered songbird nesting habitat, but after Service representatives met with her and assessed the situation, she was given the go-ahead to clear the fencerow.

## **Utah: Domestic Geese and the Kanab Ambersnail**

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### ***The Allegation***

The U.S. Fish and Wildlife Service forced domestic geese in Utah to vomit to see if their stomachs contained endangered Kanab ambersnails. The landowner was threatened with a fine of \$50,000 for each snail eaten by a goose. (Source: National Wilderness Institute, Endangered Species Blueprint).

### ***The Response***

Some geese were removed from a pond inhabited by Kanab ambersnails. None were forced to vomit, nor was anyone threatened with a fine for snails consumed by the geese.

## **Texas: Endangered Species Lower Property Values**

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### ***The Allegation***

The presence of endangered species has lowered property values in Texas.

### ***The Response***

This allegation is frequently associated with anecdotal reports from individual landowners or with a study conducted by the Texas and Southwestern Cattleraisers Association. Land values in the Austin area, to cite one example, did decline after the mid-1980s, but most of that decline occurred in 1987 because of the Savings and Loan crisis. The golden-cheeked warbler—the species usually blamed for the loss of property values—was not listed as endangered until 1991. The study by the TSCRA purported to show that land values in 33 Texas counties affected by endangered species listings had declined more than land values in other Texas counties. This study was analyzed by Dr. Stephen Meyer of the Massachusetts Institute of Technology (MIT), who found that TSCRA had analyzed the economic data incorrectly and that the data did not in fact support the conclusion that property value declines were associated with the presence of endangered species.

## **Texas: Species Stalls Real Estate Sale**

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### ***The Allegation***

Margaret Rector owns 15 acres of commercially-zoned property in Travis County, Texas, which is habitat for the golden-cheeked warbler. Because an endangered species is present on her property, she is unable to either develop or sell it. Since the land cannot be developed, the value of the acreage has declined and Ms. Rector alleges she has not only lost a good deal of money, but now cannot find a buyer at all because of the presence of an endangered species on her land.

### ***The Response***

The U.S. Fish and Wildlife Service informed Ms. Rector that development of her property required a permit under either Section 7 or Section 10 of the Endangered Species Act. No application for such a permit has been received. Land values in the Austin area declined significantly in the wake of the Savings and Loan crisis, and the majority of the area's property value decline occurred at that time, prior to the listing of the golden-cheeked warbler. It is true that buyer concern about the presence of endangered species has been an issue in Austin real estate sales. The proposed Balcones Canyonland Conservation Plan would address problems such as that experienced by Ms. Rector.



## **North Carolina: The U.S. Army and the Red-Cockaded Woodpecker**

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### ***The Allegation***

The U.S. Army can defend against the armies of Saddam Husseln, but they are losing their battles with the Red Cockaded Woodpecker. Several areas of Fort Bragg, North Carolina, have been closed and construction of a needed maintenance division complex is on hold because of this bird, which may also threaten harvest of the Southern Forest. Some call the Red Cockaded Woodpecker the spotted owl of the future. (Source: Timber Industry Labor Management Committee)

### ***The Response***

There are 182 million acres of timberland in the South (90 percent privately-owned and 10 percent, federal and state-owned). The U.S. Fish and Wildlife Service estimates that between 500 and 1,000 groups of Red Cockaded Woodpeckers may still survive on private lands. Based on the current habitat guidelines for Red Cockaded Woodpeckers, 1,000 groups would require 60,000 acres (i.e., 60 acres per group), or less than 1 percent of the total private timberland in the South. This is not considered a threat to the Southern Forest, which has already been harvested three complete times. Construction of the Army's maintenance division complex has gone forward at Fort Bragg following completion of the consultation process with the Service, and no necessary training activities have been stopped because of endangered or threatened species. In the case of the Army projects, consultation was the key. Endangered Species Act listings rarely require a substantial change in plans for development. A 1992 General Accounting Office audit found that of 18,211 consultations between 1988 and 1992, 99.9 percent went forward unchanged or with minor modifications.

## **Oregon: The Butterfly and the Golf Course**

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### ***The Allegation***

In a cover story entitled, "The Butterfly Problem," in the January, 1992 issue of *The Atlantic*, the authors portrayed an Oregon developer whose lifelong dream of carving fairways on a section of the Oregon coast was snuffed in the morass of Endangered Species Act protection of an endangered butterfly.

### ***The Response***

U.S. Fish and Wildlife Service personnel helped the developer obtain an incidental take permit under the Endangered Species Act, recognizing that development of a Habitat Conservation Plan in connection with the golf course would assist the long-term survival of the butterfly. The developer, however, was unable to satisfy Oregon's land use planning laws on grounds unrelated to the ESA, and the project was abandoned.

## Florida: Key Deer

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### *The Allegation*

To protect more than 400 head of endangered key deer on 8,000 acres of Florida Keys, elementary children are bused an additional 30 miles around the habitat. A plan to build a school at a closer location has been stalled because of opposition by environmental groups. (Source: Timber Industry Labor Management Committee).

### *The Response*

The Florida key deer, listed as endangered in 1967, inhabits some 26 islands in the lower Florida Keys. The herd currently numbers between 250 and 300. Big Pine Key is believed to support two-thirds of this population due to its size, predominance of pineland, and year-round availability of fresh water. The deer need to cross U.S. Highway 1 to gain access to seasonal fresh water and to maintain genetic diversity. More deer are killed each year by vehicles (60 to 65) than are being replaced by the herd, and half the deaths occur on U.S. 1. In an effort to satisfy the recovery plan goal to establish underpasses and overpasses so the deer may safely cross the highway, the key deer recovery team needed to locate two areas that could be used as corridors. The proposed school was to be built near one of the corridors. On February 7, 1995, U.S. Fish and Wildlife Service staff met with representatives of Monroe County, the School Board, and the Florida Department of Community Affairs to discuss locating the school in an existing facility. The Service agreed the revised plan would not interfere with movement of the deer because the proposal was for a small neighborhood school and development will consist only of renovating existing church buildings and no more than two portable classrooms. A vegetated buffer zone will be maintained and traffic patterns are not expected to increase. The Service also recommended development of a habitat conservation plan (HCP) in the area while protecting endangered species and pledged necessary technical assistance to expedite a successful HCP.

## North Carolina: Timber and the Red-Cockaded Woodpecker

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### *The Allegation*

When the endangered Red-cockaded woodpecker arrived on Ben Cone's property in North Carolina, the Endangered Species Act put 1,000 acres of his land off limits to him. He has spent \$8,000 to pay biologists to make sure he is following the stringent rules and figures he has lost \$1.8 million in timber that is tied up in the protected zone. To protect his remaining land from being occupied by the bird and consequently falling under federal land control, Cone had no choice but to change his timber management practices to try to harvest the pines before they become old enough to attract woodpeckers and prevent him from using the rest of his land. (National Wilderness Institute, Endangered Species Blueprint).

### *The Response*

Mr. Cone was initially offered the option of developing a Habitat Conservation Plan, which allows incidental take of an endangered or threatened species in pursuit of otherwise lawful activity—such as logging. Many organizations and developers are participating in such plans. Mr. Cone declined. In the meantime, he did submit a management plan to the U.S. Fish and Wildlife Service in Atlanta, which was approved. He is managing his land, and logging it.

## **California: The Kern County Farmer**

### ***The Allegation***

A "strike force" of 25 agents swooped down by helicopter, arrested a Taiwanese immigrant farmer in Kern County, California, and seized his tractor for killing an endangered rat and other endangered species when he was unaware there were protected animals on his property.

### ***The Response***

Mr. Taung Ming-Lin, an immigrant from Taiwan, paid \$1.5 million for arid property in California. In November, 1992, he was notified by registered letter from the State of California that there were endangered species (Tipton kangaroo rat, San Joaquin kit fox and blunt-nosed leopard lizard) on his property and that he needed to contact state and federal wildlife officials to obtain permits before proceeding with development of his land. Other California landowners in similar situations have obtained such permits. In February, 1994, a State fish and game representative spoke with Mr. Ming-Lin's foreman about whether appropriate permits had been obtained for developing the land, since endangered species were present. The representative advised Mr. Ming-Lin's son during the same visit of the need to gain appropriate permits and provided names of individuals to contact. He advised them that cultivation should stop until permits were obtained. Two more contacts were made by state and federal agents advising of the need to obtain permits before a search warrant was eventually executed on February 20, 1994, by approximately four U.S. Fish and Wildlife Service agents, California fish and game wardens and biologists. No helicopters were used. Remains from endangered Tipton kangaroo rats were located. A tractor and a disc were seized under the authority of the search warrant. In May, 1995, the government dropped the charges in exchange for Mr. Ming-Lin's agreement to wait 6 months before resuming farming, to obtain the necessary federal and state permits and to donate \$5,000 to endangered species protection in Kern County.

## **Florida: The Scrub Jay**

### ***The Allegation***

In Florida, a person's home is not his castle when it comes to the Florida Scrub Jay. More than 250 landowners (were) warned not to alter or remove underbrush from their property because "any activity which destroys scrub occupied by scrub jays may violate (the law)." Touch that scrub and you may land in jail for up to 1 year and pay up to \$10,000 in fines. (Source: Timber Industry Labor Management Committee).

### ***The Response***

Letters were mailed to a large number of property owners in Florida explaining how they may obtain authorization to proceed with development plans. The letters contained information, not threats. Since the beginning of that initiative, hundreds of authorizations to proceed have been issued by the U.S. Fish and Wildlife Service in Jacksonville, and many of those were granted within a week of the request. Brevard County has requested and received a congressional appropriation to fund a Habitat Conservation Plan, which, when approved by the Service, will solve development conflicts in that county as they relate to scrub jays. Other large projects have proceeded with HCPs or were resolved without a need for permits. Overall, public reaction to the scrub initiative has been one of acceptance and cooperation. The Endangered Species Act has been used to its fullest to help solve conflicts related to this species.



# Endangered Species Act: The Rest of the Story

## The Allegations and Responses

### California: The Stephens' Kangaroo Rat and Homebuyers

#### *The Allegation*

This little rodent cost 100,000 taxpayers of Riverside County, California, \$1,950 each in "impact fees" to raise the \$103 million needed to set aside 30 square miles of habitat. Farmers lost up to half their tillable acreage. One family lost \$75,000 in annual farm income. (Source: Timber Industry Labor Management Committee).

#### *The Response*

Under Riverside County's Habitat Conservation Plan for the Stephens' kangaroo rat, a mitigation fee of \$1,950 per acre of new development, not per taxpayer, is being collected to purchase permanent habitat reserves for the species, helping clear the way for development of other areas in the county. The mitigation fee translates into approximately \$215 per home, or less than one-fourth of 1 percent of the cost of a \$95,000 home.

### California: The 1993 Fires

#### *The Allegation*

People's homes burned down in California because they could not clear vegetation around their homes due to prohibitions on such clearing designed to protect the endangered Stephens' kangaroo rat.

#### *The Response*

The General Accounting Office (GAO) investigated these allegations and reported to the Congress in June, 1994, that the California fire was fanned by 80-mile-per-hour winds, and jumped concrete barriers, highways and a canal. According to GAO, "while some owners continue to believe that disking around their homes prior to the fire would have saved their homes, we found no evidence to support these views. Homes where weed abatement, including disking, had been performed were destroyed, while other homes in the same general area survived even though no evidence of weed abatement was present. Overall, county officials and other fire experts believe that weed abatement by any means would have made little difference in whether or not a home was destroyed in the California fire." Firemen said clearing hundreds of feet of ground would not have mattered, because fires of such ferocity can leapfrog more than a mile with searing ashes or hot embers. A university professor who has studied such fires declared this fire was something that "not even the entire U.S. Army could have stopped." Finally, GAO concluded, "on the basis of the experience and views of fire officials and other experts... the loss of homes during the California fire was not related to the prohibition of disking in areas inhabited by the Stephens' kangaroo rat."

### **Ohio: Peregrine Falcon**

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Nesting peregrine falcons have been successfully established on ledges of tall buildings in Cleveland, Columbus, Cincinnati, Dayton, Toledo and Akron by the Ohio Division of Wildlife. In 1993, when it became apparent that a planned Fourth of July fireworks display in Cleveland would coincide with the hatching of falcon chicks, the U.S. Fish and Wildlife Service, working under an emergency informal consultation, helped the city maneuver the displays in a way that would not harm the birds. Not only did the fireworks show go off as scheduled, but the falcons ended up stars of the show—at the finale, a crowd of 75,000 people sang a lullaby for the falcon chicks.

### **Ohio: Lakeside Daisy**

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These flowers, bright yellow and with a blossom 1½ to 2 inches in diameter, occur in the United States only at a few locations in the Great Lakes region. The Lakeside daisy, which thrives in coarse soil heavy in limestone, is threatened primarily by limestone quarrying. To enhance the flower's chances of survival, the Ohio Division of Natural Areas and Preserves purchased a 19-acre reserve. The ODNAP also relocated a number of daisies that would otherwise have been destroyed. The U.S. Fish and Wildlife Service has provided about \$15,000 to the State of Ohio to assist in this successful relocation and monitoring effort.

## **Kansas: Private Property and the Bald Eagle**

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Two bald eagle nests have become established in Kansas, and both are located on private property. The first is on agricultural land in western Kansas, where the landowner is very protective of the birds; he has, however, allowed the U.S. Fish and Wildlife Service limited access for monitoring and banding efforts. The second nest is located on a cooling lake operated by the Wolf Creek Nuclear Operating Corporation. The Wolf Creek staff has taken an active interest in this nest in terms of protection and monitoring and has assisted the Service in a successful effort to band the eaglets.

**Contact:**

- Mike Smith, Public Affairs, Region 6  
303-236-7904
- Mona Grimsley, Wolf Creek Nuclear Operating Corporation  
316-364-4143

## **Kansas: Peregrine Falcon**

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A pair of banded peregrine falcons arrived in downtown Topeka in March, 1993, and began to establish a territory less than four blocks from the State Capitol. One of their favorite perch buildings was one belonging to the Kansas Power and Light Co. An agreement was reached with KPL limiting access and maintenance to the roof, permitting placement of a nest box and a constant-monitor video camera. The company's cooperation created considerable positive public relations, as well as heightened public awareness of the importance of species such as the peregrine falcon. In 1994, the pair returned, most often using a vacant building owned by the City of Topeka. The city cooperated with the Kansas Department of Wildlife and Parks to erect a second nest box on the building, which was successfully used by the pair. Four eggs

were laid, of which three hatched, with the nestlings subsequently banded by Service biologists.

**Contact:**

- Mike Smith, Public Affairs, Region 6  
303-236-7904
- Michel' Philipp, Public Information Director,  
Western Resources (KPL)  
913-575-1927

## **Kansas: Least Tern**

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Partners for Wildlife assisted in restoration of a Cimarron River nesting site for least terns. Salt cedar invasion was reversed and predators were excluded. In 1992, the colony had declined from 11 pairs to 1 breeding pair; following restoration work, the colony increased to 6 breeding pairs, which produced 7 young.

**Contact:**

- Mike Smith, Public Affairs, Region 6  
303-236-7904

## **New York, Pennsylvania: Endangered Fresh Water Mussels**

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Riparian restoration in the form of streambank fencing and plantings has been conducted on several properties along French Creek in New York and Pennsylvania. These projects will also benefit endangered fresh water mussels, as well as preserve the diversity of the globally rare community found in the creek. The U.S. Fish and Wildlife Service worked with Partners for Wildlife, The Nature Conservancy, the Western Pennsylvania Conservancy and volunteers in construction of the fencing and installation of plantings. The project is continuing.

**Contact:**

- Spence Conley, Public Affairs, Region 5  
413-253-8325
- Carl Schwartz, New York Field Office  
607-753-9334



## Nebraska: Whooping Crane

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Through the Partners for Wildlife program, the U.S. Fish and Wildlife Service has worked to restore whooping crane roosting habitat on the Platte River, which serves as habitat for migrating whooping cranes which prefer to roost in wide channels free of vegetation and other obstructions. Much of the Platte that had been vegetation-free has become thickly forested due to extensive water impoundment and diversion throughout the Platte River system. Agreements have been signed with the National Audubon Society and individual private property owners to clear trees and vegetation from their property to open up habitat not only for the endangered whooping crane, but also for sandhill cranes, waterfowl, shorebirds and other migrating birds dependent upon such habitat.

Contact:

- Mike Smith, Public Affairs, Region 6  
303-236-7904
- Dennis Sherrerd, private citizen  
308-234-3938

## Nebraska: Least Tern and Piping Plover

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The endangered least tern and threatened piping plover nest on sandbars in the Platte River, and also at commercial sand and gravel operations. Much of the birds' natural sandbar nesting area has disappeared; the U.S. Fish and Wildlife Service has assisted the Platte River Whooping Crane Trust and the Nebraska Public Power District in creating sandbar habitat in the river channel. Vegetation is cleared and a dredge sidecasts sand and gravel onto cleared islands to simulate the natural nesting areas of both species. To date, six of these habitat complexes have been constructed along

the central Platte. The Service has also worked with the Nebraska Concrete and Aggregates Association and with private mining companies, to fence nesting areas at sand pits. The areas are signed with "Do Not Enter" warnings and mining personnel are informed of measures to protect the nesting birds. There has been no loss of jobs or profits as a result of these protective measures.

Contact:

- Mike Smith, Public Affairs, Region 6  
303-236-7904

## Kansas: Bald Eagle

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The Army Corps of Engineers proposed to issue a permit for the development of Riverfront Plaza, an outlet shopping mall, on a bank of the Kansas River in Lawrence, Kansas. The project involved the removal of several large trees used by bald eagles as perch trees; the area in question was a known use area for the species, particularly during the cold winter months. The mall proposal became locally divisive. The U.S. Fish and Wildlife Service coordinated with the Corps, the Kansas Department of Wildlife and Parks and local sponsors, and reached an agreement whereby permit conditions created a habitat area which the Service believes to be more stable and secure than that which existed prior to the project. The mall builders installed one-way viewing windows on the river side of the building, enabling patrons who might otherwise never see an eagle in the wild, to view the birds undisturbed from inside the shopping mall.

Contact:

- Mike Smith, Public Affairs, Region 6  
303-236-7904
- Marty Burke, Kansas Department of Wildlife and Parks  
913-296-2281

## Montana: Bald Eagle Viewing Management Program

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Extensive local, state and national media attention has attracted more than 10,000 people each fall to view the concentration of eagles on the Missouri River below Canyon Ferry Dam. Between mid-October and mid-December, more than 400 bald eagles at a time gather to feed on spawning kokanee salmon. A cooperative management plan and public education program was developed to help the public view the eagles while minimizing disturbance to the birds. Recreational and other activities such as dredging and mining are coordinated and managed. A Bureau of Reclamation Visitor Center was dedicated to informing and educating the public about the seasonal eagle influx, and approximately 4,200 people used the Visitor Center in 1993, including 2,690 elementary school children. Cooperators include the U.S. Fish and Wildlife Service, the Montana Department of Fish, Wildlife and Parks, the Bureau of Land Management, the U.S. Forest Service, Bureau of Reclamation, municipal and county representatives and private land owners.

**Contact:**

- Mike Smith, Public Affairs, Region 6  
303-236-7904
- Betsy Spettigie, Montana Department of Fish, Wildlife and Parks  
406-444-1276

## Kansas: Highway Bridge Consultations

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Through consultations with the Federal Highway Administration regarding various bridge replacement projects over the past several years, the U.S. Fish and Wildlife Service and FHWA, along with state wildlife and highway agencies, have developed a relationship that has seen no highway bridge replacements either stopped or significantly

delayed when they had potential to affect bald eagle habitat. In each instance, the habitat (usually perch trees) was either 1) avoided altogether or 2) replaced at cost in a nearby area.

**Contact:**

- Mike Smith, Public Affairs, Region 6  
303-236-7904
- Tony Zahn, Public Affairs, Federal Highway Administration  
816-276-2700

## Colorado: The Uncompahgre Fritillary Butterfly

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Discovered in 1978, the butterfly was threatened over the years by collectors, trampling by live-stock, small population size and low genetic variability, and was listed as endangered by 1991. Colonies existed on U.S. Bureau of Land Management land and on U.S. Forest Service property. Though BLM and the USFS had collecting and grazing restrictions in place prior to listing, adding the butterfly to the list increased its protection and placed more emphasis on managing the fragile habitat in which the butterfly resides. Following the listing, the U.S. Fish and Wildlife Service entered into an interagency agreement to provide recovery funding. Partnerships were also formed with the University of Nevada, Reno, and the Colorado Natural Areas Program to carry out preparation and implementation of a recovery plan. Since its listing, the butterfly has shown an increase in numbers and a new large colony has been found a little more than a mile from the original discovery site. If funding is provided for management and research in coming years, the butterfly should continue its recovery trend.

**Contact:**

- Mike Smith, Public Affairs, Region 6  
303-236-7904
- Janet Coles, Colorado Natural Areas Program  
303-866-3203 (x330)

**Massachusetts: Bog Turtle Habitat**

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Wetlands have been restored by The Nature Conservancy on land the organization owns in Massachusetts, for the benefit of the bog turtle. This restoration will provide critical basking, nesting and nursery habitat for the bog turtle.

## Contact:

- Spence Conley, Public Affairs, Region 5  
413-253-8325
- Frank Lowenstein, The Nature Conservancy  
413-229-0232

**New Jersey: Bat Conservation**

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The U.S. Fish and Wildlife Service completed construction of a bat conservation gate on private property at the Hibernia mine in Morris County, New Jersey, during July, 1994. The Hibernia mine supports the largest known bat hibernaculum in New Jersey and the only known hibernaculum for the federally endangered Indiana bat in the state. The landowner granted permission for construction of the gate to the Service and the New Jersey State Endangered and Nongame Species Program. This project was also supported by Bat Conservation International, a non-profit organization dedicated to bat conservation around the world.

## Contact:

- Spence Conley, Public Affairs, Region 5  
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- Mike Valent, New Jersey Endangered and Nongame Species Program  
908-735-8975

**California: San Francisco Bay and Sacramento-San Joaquin Delta**

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On December 15, 1994, the federal government and the State of California agreed to a plan to protect the San Francisco Bay and Sacramento-San Joaquin Delta estuary ecosystem, while providing reliable water supplies to farms and cities across the state. The landmark agreement, which came after lengthy and intensive negotiations, involved four federal and five state agencies. It is already considered a model for solving complex resource management issues. The pact covers the delta inland from San Francisco Bay to the confluence of the Sacramento, the San Joaquin and a number of smaller Northern California rivers. It establishes limits on how much fresh water can be diverted from the estuary to agriculture and municipal water users. The pact also aims to protect imperiled fish species by ensuring that the young survive migration through the delta and that diversions do not make breeding waters too salty. The delta may be California's most important water resource and is the largest wetland habitat in the western United States. It provides 60 percent of the fresh water used in California and is the source of irrigation water for nearly half of the nation's fruit and vegetable crops. The December agreement established final water quality standards for the bay-delta issued by the Environmental Protection Agency, and included the U.S. Fish and Wildlife Service final designation of critical habitat for the delta smelt, listed as a threatened species. "I want to congratulate all involved parties for reaching this unprecedented agreement," said Richard Rosenberg, chairman and chief executive officer of the Bank of America and chair of the Water Task Force of the California Business Roundtable. "It demonstrates that water supply in California can be managed in the best interests of both the economy and the environment."

## Contact:

- David Klinger, Public Affairs, Region 1  
503-231-6121
- Bill Glenn, Public Affairs, Environmental Protection Agency  
415-744-1589



### **Texas: Aplomado Falcon**

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Aplomado falcons are being reintroduced in Cameron County, Texas, where a voluntary effort involving local landowners, and state and federal agency representatives resulted in the formation of the Cameron County Wildlife Co-Existence Committee. Through this effort, landowners were able to express their concerns regarding nationally mandated pesticide restrictions and offer practical alternatives to enable traditional agriculture to co-exist with endangered species. This spring, aplomado falcons nested near Brownsville, Texas, the first time this species has nested in the United States in more than 40 years. The pair produced one healthy chick. The Peregrine Fund, an independent conservation group dedicated to birds of prey, has released more than 30 captive-bred aplomado falcons at Laguna Atascosa National Wildlife Refuge in southern Texas since 1993. Further releases are planned.

Contact:

- Tom Bauer, Public Affairs, Region 2  
505-766-3940
- Wayne Halvert, Chairman, Wildlife  
Co-Existence Committee  
210-423-7015

### **Ohio: A Consultation Helps Save 800 Jobs**

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When the Melgs 31 coal mine flooded with underground water in 1993, the Southern Ohio Coal Company faced a dilemma. Should they close the mine and cause job losses, or open the mine and risk environmental damage from the pumping of water from the mine shaft? The company worked with a number of federal and state agencies, and with the U.S. Fish and Wildlife Service on federally-listed endangered species issues. Through an informal consultation, the company and the Service arrived at a solution that avoided or minimized damage to endangered mussels when water in the flooded mine was pumped into two creeks that feed into the Ohio River. The mine is again open and 800 residents still have their jobs.

### **Virginia: Virginia Round-Leaf Birch**

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While only 11 trees remain of the rare Virginia round-leaf birch in southwest Virginia, cultivated seedlings have increased the species' population to 1,400 trees in 20 additional locations, moving the U.S. Fish and Wildlife Service to propose in November 1994 that the species be reclassified from endangered to the less-critical category of threatened. The Virginia round-leaf birch was first described by botanist W. W. Ashe, who noticed the trees with the unusual leaves on the banks of Dickey Creek in Virginia in 1918. For almost 60 years, the birch was believed extinct, until a naturalist rediscovered the species not far from Ashe's original site. Representatives from various government agencies, academic institutions, the conservation community and the private sector formed a committee to study, manage and protect the tree. Private landowners are cooperating by allowing the erection of fences, the distribution of artificially-propagated seedlings, the removal of competing vegetation, and by helping to stabilize creek banks against erosion. The outlook for the round-leaf birch has improved significantly and it may eventually be removed from the threatened list.

Contact:

- Spence Conley, Public Affairs, Region 5  
413-253-8325
- Diana Weaver, Public Affairs, Region 5  
413-253-8329

## **Texas: An Agreement to Protect Red-Cockaded Woodpeckers**

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In August 1994, the U.S. Fish and Wildlife Service signed a Memorandum of Agreement with Champion International Corporation, the U.S. Forest Service, and the Texas Parks and Wildlife Department in Onalaska, Texas, to benefit the endangered red-cockaded woodpecker. Under the agreement, Champion will protect and manage a 2,000-acre mature longleaf pine stand, a type of habitat rare in East Texas. It will benefit the woodpecker and other sensitive species, including other federal and state-listed wildlife, while allowing the selective harvest of individual trees in the area. Champion will consolidate its long-term woodpecker management in this area, increasing the prospects for survival and expansion of existing populations within the management area, and providing a reserve population to bolster other populations on state and federal lands in Texas.

## **Oregon: Logging and the Spotted Owl**

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Under an agreement between the U.S. Fish and Wildlife Service and Weyerhaeuser Co., the wood products corporation will log on 209,000 acres in Oregon's spotted owl country. This is the first such plan in Oregon between the Federal government and a private timber company. The Millicoma Tree Farm agreement, known as a Habitat Conservation Plan (HCP), will make a combination of set-asides for the spotted owl for the first 20 years of what is at least a 50-year plan. In return, Weyerhaeuser will be protected from prohibitions on "taking" of spotted owls—restrictions that ordinarily apply to the harm of protected species on private land. There are 35 owl sites on the Millicoma property and 10 pairs have produced offspring. Under the Millicoma plan, Weyerhaeuser will 1) leave 1,963 acres of existing habitat for at least the first 20 years of the agreement, 2) achieve by the year 2014 a landscape in which at least 40 percent of the tree farm will be in forested stands capable of providing habitat for dispersing young owls and 3) maintain the plan for 50 years, with

the Service having the option of extending it for another 30 years if certain criteria related to the status and conservation of the owl are met. The Weyerhaeuser agreement is the third such Habitat Conservation Plan the Service has approved with a private timber company. In 1992, the Service approved a plan for a 383,000-acre parcel owned by the Simpson Timber Company in northern California; in 1993, a similar plan was approved for the Murray Pacific Corporation's 54,000-acre holdings in Lewis, Washington. "This is a classic 'win-win' solution, and I thank Secretary Babbitt for his leadership and compliment the Fish and Wildlife Service for its professional approach in handling our application," said Charles W. Bingham, executive vice president of the Weyerhaeuser Co. "Weyerhaeuser has distinguished itself as a real leader in the future of forest management," said Secretary Babbitt. "The land included in this plan will now be managed for both timber and owls, showing that we can achieve our conservation goals and still cut timber in an environmentally responsible way."

### **Contact:**

- David Klinger, Public Affairs, Region 1  
503-231-6121
- Paul Barnum, Communications Manager,  
Weyerhaeuser Co.  
503-741-5431

## **Texas: The Brown Pelican**

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In 1994, brown pelicans, first listed as endangered in 1970, successfully nested on Little Pelican Island in Galveston Bay in Texas for the first time in more than 40 years. Approximately 125 pairs nested and produced 90 young.

### **Contact:**

- Tom Bauer, Public Affairs, Region 2  
505-766-3940

## **Massachusetts: The Plymouth Redbelly Turtle**

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The U.S. Fish and Wildlife Service listed the redbelly turtle, a large, freshwater turtle with a shell 10 to 12 inches long when mature, as an endangered species in 1980. The Plymouth redbelly is found in 17 ponds and one river in Plymouth County, Massachusetts. It is a mid-Atlantic to southern species with its closest relatives in New Jersey. Because of its small population size (there are only about 300 breeding-age turtles in Massachusetts) and its limited geographic range, the Plymouth redbelly is susceptible to population declines. But scientists have nonetheless made steady progress toward achieving full recovery of the species. A major recovery effort was the establishment in 1984 of the Massasoit National Wildlife Refuge, a satellite of Great Meadows National Wildlife Refuge in Sudbury, operated jointly by the Service and the Massachusetts Division of Fisheries and Wildlife. Biologists have made efforts to protect turtle nests and hatchlings from predation. Cranberry growers in Plymouth County have cooperated in the recovery program; the openness of reservoirs and upland watershed areas managed by the cranberry industry provide high quality turtle nesting habitat. All of these efforts have markedly improved the outlook for the turtle's future and biologists now predict that reclassification of the turtle to threatened will be possible by the year 2000 if the recovery program is successful, and full recovery may be achieved by 2015.

### **Contact:**

- Spence Conley, Public Affairs, Region 5  
413-253-8325
- Rachel F. Levin, Public Affairs, Region 5  
413-253-8327

## **Ohio: Bald Eagle**

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Through successful restoration efforts by the Ohio Division of Wildlife and protection under the Endangered Species Act, bald eagles have significantly recovered in Ohio. The 1995 count of nesting pairs in the state was 29, compared to 4 nesting pairs counted in 1974. The U.S. Fish and Wildlife Service assists in helping to avoid or minimize impacts to the birds through contaminants monitoring and consultations under the endangered species program.

## **Texas: Pecos Gambusia, Comanche Springs Pupfish**

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The Texas Department of Parks and Wildlife, the Texas Agricultural Extension Service, private landowners, and the U.S. Fish and Wildlife Service are working to create endangered fish habitat and continue traditional agricultural practices in West Texas. An agreement was reached between landowners and Balmorhea State Park to guarantee surface water in an artificial cienga (wetland area). Ciengas are traditional habitat for the endangered Pecos gambusia and Comanche Springs pupfish. In exchange for providing water, landowners have the flexibility to implement alternative pesticide measures around outer irrigation canals.

### **Contact:**

- Tom Bauer, Public Affairs, Region 2  
505-766-3940



## **Idaho, Montana, Wyoming: Gray Wolf Reintroduction**

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After nearly two years, 120 public meetings, hearings and open houses, and consideration of 170,000 public comments, the U.S. Fish and Wildlife Service produced a final Environmental Impact Statement with a recommendation to establish "non-essential, experimental" populations of wolves in two release areas, which comprise parts of Idaho, Montana and Wyoming, including Yellowstone National Park. The "non-essential, experimental" designation allows flexible management of reintroduced animals under a special provision of the Endangered Species Act, which gives the Service the option of implementing special rules to address the concerns of local residents. The Service subsequently established guidelines which allow federal agencies, the states, tribes and landowners to take action, when necessary, to protect livestock or deal with problem wolves. With those provisions in place, the Service has completed the first step in reintroduction, bringing 29 Canadian gray wolves to Yellowstone and central Idaho in January, 1995. If allowed to return on their own, the wolves would eventually repopulate the area, but without the special management options now available and requiring additional decades to reach recovery. With continuing reintroductions over the next two to four years, recovery levels of 100 wolves in each reintroduction area would be reached by the year 2002, at a cost of about \$6.7 million.

### **Contact:**

- Ed Bangs, Project Leader, Wolf Reintroduction Program  
406-449-5225
- Georgia Parham, Public Affairs, U.S. Fish and Wildlife Service  
202-208-5634

## **Lower 48 States: The American Bald Eagle**

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By 1963, the presence of DDT in the food chain, which caused eagles and other birds to lay eggs with shells that were too thin to last to hatching, had precipitated a dramatic decline in the eagle population to 417 nesting pairs. A ban on the use of DDT and the protection afforded the eagle by the Endangered Species Act had, by 1994, increased the population nationwide to about 4,400 nesting pairs. This impressive increase in the eagle population allowed the U.S. Fish and Wildlife Service to propose in 1994 that the eagle be reclassified in 43 states from endangered to threatened, and to recommend eventual removal from the endangered species list altogether, although the latter action may not occur until the year 2005. The eagle population today is considered quite strong, with the species doubling its breeding population every 6 to 7 years. The average number of eaglets produced per active nest per year now indicates an increase in the species' population of about 10 percent per year. The number of occupied active eagle nest sites increased 408 percent since 1974 and 32 percent since 1990.

### **Contact:**

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- Georgia Parham, Public Affairs,  
U.S. Fish and Wildlife Service  
202-208-5634

# Endangered Species Act Success Stories

## Virginia: Clinch River Riparian Restoration

Nearly 10 miles of fencing and several alternative water supply structures have been installed on private land along the Clinch River and its tributaries in southwest Virginia in an attempt to eliminate streambank erosion from overgrazing and trampling of endangered fresh water mussels by cattle. Both the fencing and the water structures were financed jointly by the U.S. Fish and Wildlife Service, The Nature Conservancy, the Natural Resource Conservation Service and included contributions from private landowners. The U.S. Fish and Wildlife Service has worked cooperatively with The Nature Conservancy and the U.S. Department of Agriculture to implement this program. Approximately a dozen landowners have agreed to modify their cattle management practices to eliminate the trampling of mussel beds and to improve water quality for the mussels by nutrient and sediment reduction. More farmers are expected to join this program.

### Contact:

- Spence Conley, Public Affairs, Region 5  
413-253-8325
- Martha and Thomas Mewdome, private citizens  
703-479-3057

## Montana: Gray Wolf

In 1993, a pair of gray wolves established a territory along the Rocky Mountain East Front. The territory encompassed four ranches as well as state and federal land, and meetings were held with the affected land owners and three federal agencies. The wolves denned in the middle of a cattle pasture and the rancher was provided with an incentive payment of \$5,000 by Defenders of Wildlife for having wolf pups produced on his property. The

U.S. Fish and Wildlife Service initiated a study in cooperation with the U.S. Forest Service, Montana Department of Fish, Wildlife and Parks and the ranchers, to evaluate the wolf population. Funding for the study was provided by the Bureau of Land Management, Boone & Crockett Club and Wolf Haven International. Ranchers actively assisted with capture and radio collaring of two wolf pups and reporting wolf observations. Two yearling wolves were relocated in April, 1994, due to live-stock depredation, but none of the cooperating parties requested removal of the wolf pack. The wolves produced at least three pups in April, 1994, at the same den site as in 1993 and continue to use the ranches as about half of their territory.

### Contact:

- Mike Smith, Public Affairs, Region 6  
303-236-7904
- A. Dood, ES Coordinator, Montana Department  
of Fish, Wildlife and Parks  
406-994-6433

## Montana: Private Property and Eagle Nesting

Louisiana-Pacific Corp. owns land adjacent to Nevada Lake where an active bald eagle nest occurs. The corporation was aware of the bald eagle nest and the potential to displace the eagles due to proposed logging operations. The corporation contacted the Montana Field Office of the U.S. Fish and Wildlife Service and arranged a meeting to schedule and coordinate logging operations. Agreements were reached on the timing and type of logging, and monitoring after the logging was completed confirmed successful nesting by the pair of eagles.

### Contact:

- Mike Smith, Public Affairs, Region 6  
303-236-7904

## Numbers of Listings per Year

- The Fish and Wildlife Service is committed to propose for listing about 100 species per year through 1996 under a 1992 court settlement with the Fund for Animals and other environmental groups.

- Listings by year since the settlement:  
FY 93–92; FY 94–105; FY 95–77 (to 2/28/95).

- Previous listings by fiscal year:

1967.....78	1981.....5
1970.....243	1982.....7
1971.....80	1983.....23
1972.....9	1984.....45
1973.....21	1985.....57
1974.....0	1986.....52
1975.....12	1987.....52
1976.....166	1988.....54
1977.....46	1989.....35
1978.....39	1990.....46
1979.....34	1991.....53
1980.....56	1992.....93

## Proposed and Candidate Species

- 106 candidate species are currently proposed for listing.
- 293 candidate species are listed as "category 1" candidate species. These are taxa for which the Service has sufficient information to support a listing proposal, but which have not been proposed because of other work priorities.

- 3,698 are listed as "category 2" candidate species. These are taxa for which additional information is needed to support a proposal to list. It is likely that many species on category 2 will be found not to warrant listing.

## Habitat Conservation Plans

- The Endangered Species Act provides for "habitat conservation plans" (HCP) to give flexibility to private landowners who have listed species on their property.
- Under an "HCP," the landowner receives a permit that allows "incidental take" of listed species in the course of certain activities, such as development, provided that the landowner follows certain other steps to provide for conservation of the species.
- This Administration is making greater use of HCP's than did previous Administrations. There are currently about 73 approved HCP's and more than 170 in development.
- HCP's often work better for large landowners (such as timber companies and other corporations) than for owners of very small tracts of private land, but some HCP's have been negotiated with small landowners.



# Endangered Species Act At A Glance

## Number of Listed Species (as of April 30, 1995)

- U.S. species—956
- Foreign species—560
- Total— 1,516 (Dual status species are counted only once)
- Of U.S. species, 430 species are animals. 526 are plants.
- Of the listed U.S. species, 759 are "endangered," 203 are "threatened." Six U.S. listed animals have dual status.
- The list includes mammals, birds, reptiles, amphibians, fishes, snails, clams, crustaceans, insects, arachnids, and plants. Groups with the most listed species are (in order) plants, birds, fishes, mammals, and bivalves.
- An "endangered" species is one that is in danger of extinction. A "threatened" species is one likely to become endangered. Both receive the same protection, but there is more management flexibility and a possibility for permitting regulated "taking" of threatened species.

## Recovery

- 513 (54 percent of listed U.S. species) are covered by approved recovery plans.
- 232 additional species have draft recovery plans.
- As reported in the 1992 Report to Congress, nearly 40 percent of listed species are stable or improving.

- The status of 27 percent of species is unknown, primarily because of budget and staffing constraints within the Fish and Wildlife Service.
- 2 percent of listed species are believed extinct. The Service has been conservative in removing possibly-extinct species from the list because of the chance they might be rediscovered, as recently occurred with the Palos Verde blue butterfly in California.
- These statistics should be considered in light of the fact that many species have been added to the list only within the last few years.

## Budget

Congressional appropriations for the Fish and Wildlife Service's endangered species program:

FY 95—\$83.3 million\*

FY 94—\$67.5 million\*

FY 93—\$45.8 million

FY 92—\$42.3 million

FY 91—\$32.0 million

FY 90—\$24.3 million

ATTACHMENTS TO WRITTEN TESTIMONY OF MARGARET RECTOR FOR THE  
COMMITTEE ON RESOURCES MEETING, MARCH 20, 1996.

- Exhibit 1. Letter from U.S. Dept. of Interior, USF&WL DEPT. Dated Oct. 31, 1994 stating that a permit is still required and that development could occur on front 150 ft. of tract.
- Exhibit 2. Letter from John W. Doyal, Austin Realtor, relating his experience in trying to sell property having bird habitat.
- Exhibit 3. Letter dated March 14, 1995 by Margaret Rector to Senator Dirk Kempthorne showing devaluation figures on my land from 1989 to 1995.
- Exhibit 4. Letter dated April 29, 1995 to Austin Mayor and Council members expressing my view on the proposed Balcones Canyonlands Conservation Plan.
- Exhibit 5. Addressed "To Whom it May Concern" from Margaret Rector regarding Earnest Money Contract that was cancelled due to the Endangered Species Act requirements.
- Exhibit 6. Letter dated October 27, 1995 from U.S. Dept. of Interior, USF&WL Dept. updating the status of my property.
- Exhibit 7. Letter to U.S.F&WL Service giving my comments on the proposed Balcones Canyonlands Conservation Plan.



## United States Department of the Interior

## FISH AND WILDLIFE SERVICE

611 E. Sixth Street  
Grant Bldg., Suite 107  
Austin, Texas 78701

October 31, 1994

EXHIBIT 1.

Margaret Rector  
1504 Mohle Drive  
Austin, Texas 78703

Dear Ms. Rector:

By letter, dated October 8, 1994, you asked for additional information and clarification of issues relating to endangered species in Texas and on your property.

The first issue related to Secretary Babbitt indicating that the Fish and Wildlife Service would not pursue the designation of critical habitat for the golden-cheeked warbler at this time because of conservation efforts by the State. The decision not to designate critical habitat does not alter the prohibition against taking of the golden-cheeked warbler. The requirements under the Endangered Species Act for a permit to authorize incidental take of the warbler still exist. We continue to believe development can occur on the front 150 feet of the property without resulting in take of any warblers but that development on the remainder of the property could result in take. We would be happy to assist you or any purchasers of the property in pursuing an incidental take permit.

The second issue relates to the acquisition of 236 acres of the Canyon Creek property by the City of Austin. This acquisition was not related to mitigation for a specific development but was to assist in the formulation of a regional habitat conservation plan. That acquisition does not release your property from the need to obtain of a 10(a) permit to cover incidental take.

Secretary Babbitt's office is continuing to actively work on a regional plan. We hope to have additional information on this plan within the next month. If you have additional questions, please contact me at 339-9617 or contact Jana Grote of my Austin Ecological Services office at 490-0057.

Sincerely,

Sam D. Hamilton  
Texas State Administrator





# DOYAL & ASSOC. REALTY

10928 Preston Trails Dr. • Austin, Texas 78747  
Office 512-282-1098 • Fax 512-282-8713

EXHIBIT 2.

Nov. 22, 1994

Mrs. Margaret L. Rector  
1504 Mohle Dr.  
Austin, Texas 78703

Re: Endangered Species Injustices

Dear Mrs. Rector:

In connection with our previous conversations, I have had a fair amount of exposure to the injustices created by the Endangered Species Act. Howard Burris's and Texas Commerce Bank's problems in connection with the Jester Estates land is a prime example. The Act ties up a person's land for an indefinite period of time merely by labeling a tract "potential habitat" and removes virtually all the use of the land without compensation. **This labeling places the entire burden of proof on the private land owner.** In those cases, the land owner must provide at least 3 years of ~~clear~~ studies on, in this case the golden checked warbler, at a cost of approximately \$10,000. per year before the U.S. Fish and Wildlife will even consider an application for approval to develop. Then, if successful after another 1-3 years and after spending thousands of dollars for a consultant to handle the application, the land owner is turned down, only gets a small portion released for development, or is blackmailed by "mitigation" in that he has to donate such as 5-25 acres for each acre that he is able to get released for development. Meanwhile, the land owner is expected to continue paying the debt service and taxes on his property for years.

Just for the record, I know of no small property owners who have been able to get a 10A permit approved for their property due to the time and expense involved and only know of a couple of large property owners who have been successful by mitigation of i.e. 20 ac. donated for every 1 released by Fish & Wildlife. As a Realtor, I might mention that it is virtually impossible to find a buyer for a tract of land that has been labeled as habitat or potential habitat of the golden checked warbler or black capped virio.

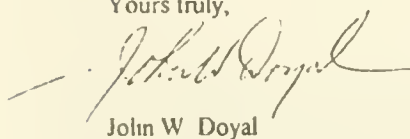
The Environmentalists who push for, in many cases, ridiculous species to be labeled endangered, seem to me in large part merely "no-growth" advocates that are using the Endangered Species Act to further their "no-growth" cause. That seems to be the case in the Austin area. They and the U.S. Fish & Wildlife also seem completely indifferent as to the severe adverse financial effects of their actions on individual property owners.

A truly endangered and **worthwhile** species is worth protecting and this issue is not argued. **The key issue is the protection of individual private property rights.** When a person's property is labeled as "possible endangered species habitat" by the U.S. Fish & Wildlife, they should **IMMEDIATELY** be compensated for the loss of value even though it is not a complete "taking". In other words, if a property is appraised/worth \$45,000. per acre as potential residential development land and the labeling as "endangered species habitat" causes the value to drop to \$500. per acre for cattle grazing (at times other than the golden checked warbler's mating season), then that property owner should be compensated for the loss of value. The problem with this is that, as I understand it, the Courts have ruled that a "taking" has to be 100% of the use/utility of the land before the government is obligated to compensate a property owner.

In summary, the environmentalists and the U.S. Fish & Wildlife have a worthwhile cause in protecting endangered species, but sound **reason/logic** and **compensation** must be brought into the Act.

Please let me know if I can be of further assistance.

Yours truly,

A handwritten signature in cursive script, appearing to read "John W. Doyal", with a long horizontal flourish extending to the left.

John W Doyal

Saved. Coinpen

March 14, 1995

Senator Dirk Kempthorne  
Dirkson Senate Office Bldg. #367  
Washington, D.C. 20510-1204

Exhibit 3.

Dear Senator Kempthorne:

At the request of Texas Agriculture Commissioner Rick Perry, I am attaching land appraisal figures on property I own in western Travis County, Texas. This will clearly show the devaluation on land due to the restrictions imposed on us by the Endangered Species Act.

You will note that the 1994 appraisal has been increased from 1993, though nothing has changed that would permit me to use or develop my land. I was unsuccessful in my protest to the Appraisal Board to get this changed. The same restrictions placed by USF&WL are still in effect today. This land has been designated as "golden cheeked warbler" habitat.

In a letter to me dated June 8, 1993, Sam Hamilton, the State Administrator for Fish & Wildlife Service, Dept. of Interior stated :

"We believe that clearing or development-related activities would constitute a "take" as defined by the Endangered Species Act. Therefore, as per our letters dated July 12, 1990 and Feb. 18, 1993 our recommendations regarding your property and the requirements of the Act remain unchanged."

I have tried to sell this land for income for my retirement. I am now 74 years of age and time is running out. Prospective buyers are not interested when told that the ESA 10(a) permit would be required, along with other exorbitant fees. Most are in disbelief that such a law exists.

I am looking to this Congress to rewrite, amend, or abolish the current Endangered Species Act. In furnishing this information to you, I trust that you will do all in your power to bring about a solution to this unjust law. It has been economically devastating to small landowners everywhere. It is a flagrant violation of our property rights as decreed by the United States Constitution.

Yours very truly,

*Margaret Rector*

Margaret Rector  
1504 Mohle Dr.  
Austin, Texas 78703-1936  
Tel: (512) 476-4559  
Fax: 512-4541035

Copies: Lori Woodward, Deputy Comm. for Communications  
Texas Dept. of Agriculture



## LAND APPRAISAL VALUES ON PROPERTY OWNED BY MARGARET RECTOR

## Property Description:

Parcel/Account 01-5937-0202-0000-90  
15.18 Acres, Alex. Dunlap Survey #805  
Abs. 224, Travis Co. Texas, Vol. 1107, Pg. 2137

## TAXING AUTHORITIES

Travis County Appraisal District

Williamson County  
Leander I.S.D.

1989	991,862.	986,500.
1990	733,978.	830,960.
1991	363,683.	830,960.
1992	30,360.	30,360.
1993	30,360.	30,360.
1994	151,800.	30,360.
1995	30,360	30,360.

EXHIBIT 4.

April 29, 1995

To: Mayor Bruce Todd  
Council Members  
Nofziger  
Shea  
Goodman  
Garcia  
Reynolds  
Mitchell

Re: Balcones Canyonlands Conservation Plan

Dear:

It is my understanding that the proposed BCCP that you will soon be voting on would impose a "certificate" fee of \$5,500. per acre for land development.

I own 15 acres of land on FM Rd. 620 that has been declared golden cheeked warbler habitat by USF&WL. For 1995 the appraised value of this tract by the Travis Central Appraisal District is \$30,360. The "certificate" fee would be as much as \$82,500. on my land.

How can you conscientiously approve this plan that is so obviously unrealistic and unfair to small landowners?

Yours very truly,

*Margaret Rector*

Margaret Rector  
1504 Mohle Dr.  
Austin, Texas 78703

MARGARET RECTOR  
1501 MOBILE DRIVE  
AUSTIN, TEXAS 78703  
512-476-4559

EXHIBIT 5.

July 23, 1995

TO WHOM IT MAY CONCERN:

Attached is a copy of a Real Estate Earnest Money Contract which I attempted to negotiate on the sale of my 15.18 acre tract near Austin, Travis County, Texas. Confidential information has been obliterated.

This contract is prime evidence of the difficulties I have encountered due to the restrictions of the Endangered Species Act.

In 1973 I bought this land as an investment for income in my retirement years. I have had this land on the market for over five years. I have been unable to sell it because it has been declared habitat for the Golden Cheeked warbler. It requires a 10 (a) permit from the U.S. Fish & Wildlife for development.

Recently I was approached by a willing buyer for this land. We entered into an Earnest Money Contract. The buyers consulted the USF&WL office here in Austin and were told they would have to obtain a 10 (a) permit and listed other requirements such as an aerial survey, mitigation measures and other conditions the buyers would have to satisfy. Out of the 15 acre tract, the buyers needed to develop only 2 or 3 acres for a dry storage building. Also, the buyers were unable to complete their "feasibility" study and meet the contract deadline because of the delays in obtaining a 10 (a) permit. The contract was then cancelled by the buyers.

The opportunity to sell my land has been thwarted by the unreasonable and unfair demands of the Endangered Species Act. Both parties - the seller and buyer have been penalized. Private enterprise has been stifled for a legitimate business enterprise.

The Endangered Species Act has already seriously devalued my land and is causing undue hardship on my ability to become self sufficient in my retirement years.

*Margaret Rector*

Margaret Rector

Enclosure







## United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Ecological Services Field Office  
10711 Burnet Road, Suite 200  
Hartland Bank Bldg.  
Austin, Texas 78758

OCT 27 1995

EXHIBIT 6.

Margaret Rector  
1504 Mohle Drive  
Austin, Texas 78703

Dear Ms. Rector:

This letter responds to your recent request for an update on the status of your property in relation to the golden-cheeked warbler. This updates our letter of March 30, 1994, in which we responded to three specific questions. Each question pertained to your property, located at the RR 620 north of the RR 2222 intersection, and compliance with the Endangered Species Act.

The property lies within the Bull Creek watershed which contains some of the highest quality golden-cheeked warbler habitat. Birds have been sighted near the boundary of this lot, but no surveys have been done on the lot itself to determine use. We continue to believe that the partially cleared area within 150 feet of RR 620 may be developed without resulting in a take. Our position, that alteration of habitat could result in take and our recommendation that authorization under the Endangered Species Act be pursued prior to any vegetation alteration or construction activity remains unchanged.

We would be happy to review any proposed plans to determine if a taking could occur and if so, to provide recommendations for development of a Habitat Conservation Plan that could be used to obtain an incidental take permit. The amount of mitigation recommended could be different depending on the type of development, the portions of the property to be developed and similar factors.

We recently reviewed your property for a prospective buyer, Mr. Darwin Macon. He proposed to alter 6.97 acres on the front part of the lot to develop storage units and a retention pond. We reviewed the proposed development and identified the level of mitigation which we believed would have offset the take of the golden-cheeked warbler. We recommended 13.7 acres of high quality habitat be conserved to offset the direct and indirect loss of 8.2 acres of warbler habitat. We gave him credit for 5.2 acres onsite, leaving 8.5 acres to be purchased as offsite mitigation in the Bull Creek or Cypress Creek watersheds. On August 15, 1995, a letter was sent to Mr. Macon for his review.

Margaret Rector

2

We were able to streamline the permitting process for small landowners who want to build a single residence. If you would like more information on that process please let us know. The City of Austin, Travis County, and the U.S. Fish and Wildlife Service also expect to have final resolution of the Balcones Canyonlands Conservation Plan regional permit by March of 1996.

If you have any further questions please call Mary Orms at (512) 490-0057.

Sincerely,

*Joseph E. Hobbs*  
Field Supervisor

December 1, 1995

EXHIBIT 7.

U.S. Fish and Wildlife Service  
10711 Burnet Road, Ste. 200  
Austin, Texas 78758

Subject: Comments on the Balcones Canyonlands  
Conservation Plan

Gentlemen:

As a small landowner I wish to go on record as being adamantly opposed to the current BCCP. The conditions imposed by the plan will render my land virtually worthless and unmarketable. The impact fees for development are exorbitant. There are too many unanswered questions about funding the plan. The money should come from every citizen, and not from just the landowners. Generally it appears to be vague and unworkable.

In my own case, I am trying to sell my 15 acres on FM 620 that has been designated habitat for the warbler. I am retired and need the money from the sale of this land. Prospective buyers have been unwilling to proceed with contracts due to the excessive fees of \$5,500 per acre to pay for development. They are wary of dealing with the BCCP, or the USF&WL Endangered Species Act 10(a) permit.

As an American citizen living in a free enterprise society, it seems only fair that I should be able to have some financial benefit from a land investment I have had for over 20 years. The Endangered Species Act and the BCCP have seriously threatened my rights of private property ownership.

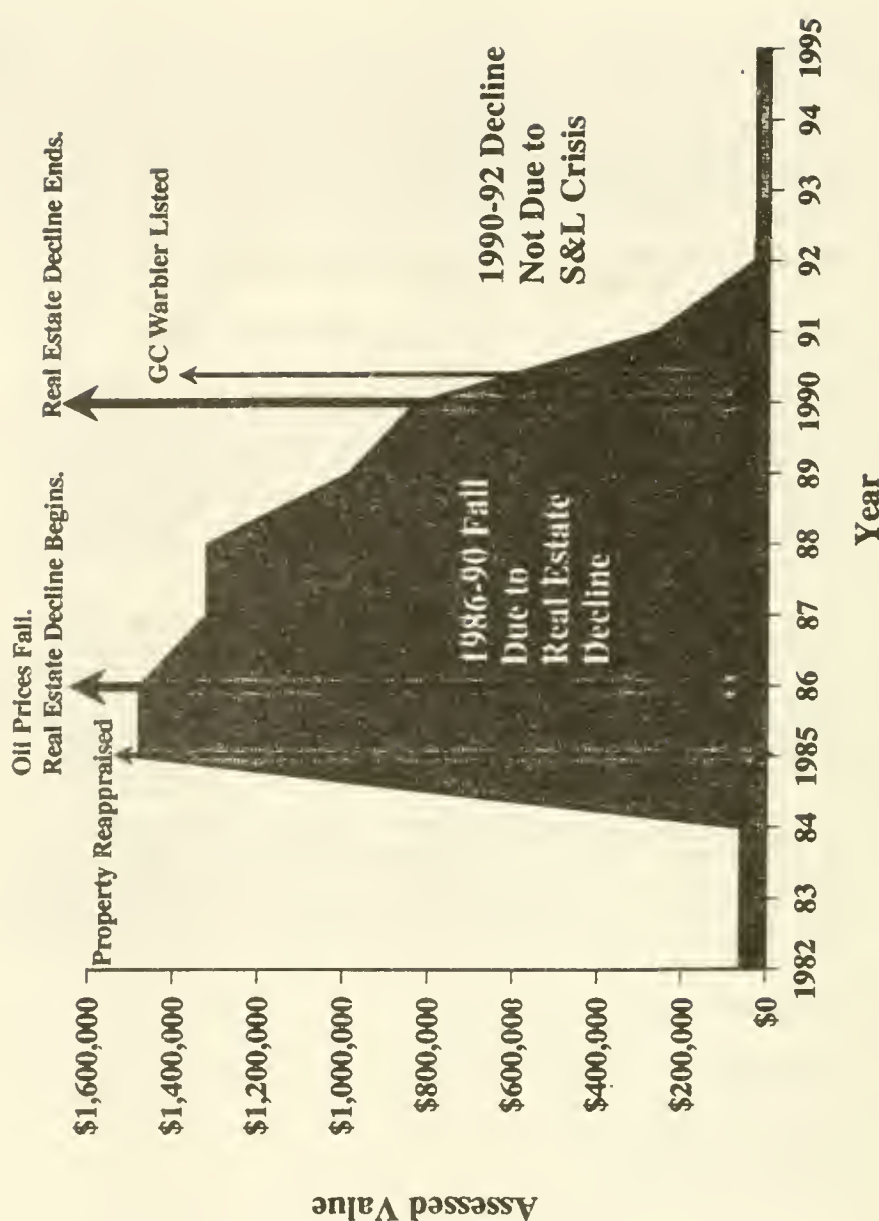
Yours very truly,

*Margaret Rector*

Margaret Rector  
1504 Mohle Dr.  
Austin, Texas 78703



# Taxable Market Value of Rector Property



Source: Williamson County Appraisal District

U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON RESOURCES

REPORT ON EFFECT OF ENDANGERED  
SPECIES ACT ON PRIVATE  
PROPERTY RIGHTS

SUBMITTED FOR HEARING TO BE HELD MARCH 20, 1996  
AT 11:00 A.M. IN COMMITTEE ROOM 1324 LONGWORTH  
HOUSE OFFICE BUILDING WASHINGTON, D.C.

REPORT OF LLOYD A. GOOD, JR.  
AFFECTED PROPERTY OWNER  
64 WEST KINGFISH LANE  
P.O. BOX 148  
LOWER SUGARLOAF KEY  
FLORIDA 33044  
305-745-3211

Statement of Lloyd A. Good, Jr.  
As to Effect of Endangered Species Act on His Property

On October 8, 1973 at the age of 43 I purchased real estate in the Lower Florida Keys consisting of Sugarloaf Lodge, a small resort, its surrounding acreage and other land near the resort. It was my intent to operate and expand Sugarloaf Lodge as a destination resort and to develop the other acreage into an RV Park, residential homesites and commercial activities. I planned to spend the rest of my productive life with my wife and four children in the Lower Keys developing the property that I had purchased while also practicing law.

I am now 65 and I still have Sugarloaf Lodge, a small resort, and most of the other property I purchased in 1973. I was able to develop the RV Park, but have not increased the size of the resort nor have I been able to develop most of the land I purchased in 1973. My children are now all grown and help me and my wife operate Sugarloaf Lodge and the RV Park. I have spent most of my legal career in the Keys attempting to develop and keep the property I purchased in 1973.

Included in my 1973 purchase was a 40 acre parcel of land on Lower Sugarloaf Key known as Section "C" Extension. At the time I purchased that parcel it was zoned Residential and was platted into 76 single family waterfront and/or canal lots with 5 canals and 4 streets. It was located two miles from Sugarloaf Lodge directly off Sugarloaf Boulevard at the end of already developed subdivisions that had existing canals and streets. Very few homes had been erected in 1973 at the time I purchased.

It was my intent at the time of purchase to develop Section "C" into a first class, single family, waterfront or water oriented community. At the time of purchase no Corps or Florida permits had been obtained to dig the platted canals and fill the low lying waterfront areas on the property. At the time of purchase the Endangered Species Act had not been passed nor was the Army Corps exercising jurisdiction over land above the mean high tide line. All of Section "C" proposed for development was above the mean high tide line, but most of the waterfront area was salt marsh which would later be designated wetlands requiring Corps and Florida permits to develop and fill.

At the time of purchase no one could conceive or foresee that protection under The Endangered Species Act would be extended to such subspecies as the Lower Keys Marsh Rabbit or the Silver Rice Rat. Section "C" extension as late as 1989 was not considered habitat for either species.



The Lower Keys marsh bunny was federally listed July 23, 1990 and the silver rice rat was listed April 30, 1991. To this date no silver rice rat has ever been found on the property and only a few Lower Keys marsh bunnies have ever existed on this property.

From 1973 and over the next 21 years I engaged in the nightmarish task of obtaining all Federal, State, and local permits to develop Section "C" extension into a first class, single family, water oriented residential development similar to those lots located on Lower Sugarloaf Key. It was my intent and hope to create similar single family lots to those that had already been developed on filled land in the neighborhood.

In 1982 and 1983 I successfully obtained Florida DER and Army Corps permits to develop a 55 lot single family water oriented residential community together with a private 48 slip marina. After 10 years of litigation, appeals and heartache I finally obtained Monroe County approval of that development plan and agreed to sell the property to a third party for \$1,000,000.00. At the time the above permits were issued neither the rabbit nor the silver rice rat were believed to inhabit Section "C" extension.

That agreement fell through when South Florida Water Management District's staff attempted to place strict conservation easements on all lots and the prospective buyer would not agree or give me additional time to show the full Board of the South Florida Water Management District, or the Court that the attempt to impose said conservation easements was improper and illegal.

It was after the sale was terminated that the staff of South Florida Water Management District suggested a drastically reduced development scheme. That plan reduced the lots to 16 waterfront lots, eliminated that boat basin and private marina, and placed all land not being used for the 16 waterfront homesites including almost 8 acres of upland in preservation.

After thorough analysis I discovered that this plan would cost much less to develop and would result in a greater economic gain to me. Since the reduced 16 lot plan was much less environmentally damaging I decided to apply for a new Corps permit to carry it out.

Before applying to Corps I met with the then Director of The Florida Department of Environmental Regulation who for the record indicated that the existing Florida dredge

and fill permit issued in 1983 could undergo minor modification without a hearing when the Corps permit was issued. I also ascertained that Monroe County would wholeheartedly endorse this reduced development plan.

At the time I applied to Corps in 1990 I did not nor did anyone else consider this property as a viable habitat for either the marsh rabbit or silver rice rat. Corps initially embraced the reduced impacts plan and initially determined that there would be no adverse effect on any listed species. With this finding the U.S. Fish and Wildlife initially agreed in its finding of no jeopardy to the rabbit in their biological opinion dated February 19, 1991.

After the February no jeopardy opinion things drastically changed. The silver rice rat appeared and the rabbit population of the Lower Keys was erroneously thought to have been decreased because of a grass burn on my property adjoining Sugarloaf Lodge. (This burn actually helped the habitat). Renewed formal consultation was then agreed to between Corps and Fish and Wildlife under Section 7 of the Act.

The biological opinion issued December 18, 1991, conflicted with the February opinion, and found that the development of the waterfront would jeopardize both the marsh bunny and the rice rat. They recommended outright denial of the 16 lot plan and drastic modification of the 55 lot permitted plan.

I disagreed strongly with the new jeopardy opinion and honestly felt Corps felt the same way. After nearly three years of no action Corps finally found that the 16 lot development would jeopardize the marsh rabbit but determined that there was no evidence of the rice rat. (Corps, however, was bound by law to find jeopardy as to the rice rat also since U.S. Fish and Wildlife's determination was by law final).

Corps on March 17, 1994 denied my 16 lot application and refused to honor my timely request to extend the 55 lot permit. I then brought suit in the Court of Claims for the taking of my property.

At the time the U.S. Fish and Wildlife issued their jeopardy opinion I already had spent 18 years and over \$100,000.00 in efforts to develop this property. This was in addition to my costs of almost \$100,000.00 to purchase. If I had not been a lawyer my costs in obtaining permits and carrying on litigation would have prevented me from developing this property because the legal and other professional fees would have been economically prohibitive.

In any event not counting my own time and effort I spent almost \$200,000.00 on this property between 1973 and March 17, 1994.

The U.S. Fish and Wildlife service stated in their December 1991 jeopardy opinion that there were reasonable and prudent alternatives which would permit me to economically develop the uplands on this property. This was directly inconsistent with their position taken in the February opinion that no reconfiguration would lessen impacts. Corps seemed to embrace that scheme when it issued its denial.

In any event I sincerely believe and unequivocally state that limiting development to the uplands would be much more damaging to the protected species than the waterfront development I proposed. I also can state beyond all doubt that such a plan would not only be economically unviable but would be a financial disaster.

I have been advised by a recognized mammal expert, Doctor Larry Brown, that any development of any part of this property would surely destroy any rabbit population that now exists on the property. Since the recognized range of the silver rice rat is a minimum of 40 acres he has also informed me that any development would also jeopardize that species. This expert mammalogist has advised me that in his opinion the destruction or alteration of this habitat would prevent both species who allegedly occupy this property from continuing to occupy the same and thereby jeopardize the existence of the entire species.

As an attorney I can positively state that any development of this property at this time would subject me to certain citizen suits under the Endangered Species Act. I have lived in this area for almost 23 years and I can state without any doubt or equivocation that any effort to develop any portion of this property for any purpose would trigger litigation from some if not all of the adjoining property owners. Litigation would also surely come from other environmental groups or individuals violently opposed to any further development in the Florida Lower Keys

I am now sixty five years old and since March 1994 I have spent another \$100,000.00 in costs and attorney's fees bringing suit against the United States of America in the Claims Court. That suit alleges and I sincerely believe that my property was taken for a public purpose without compensation on March 17, 1994 when the Army Corps failed to extend my 55 lot development permit and denied my 16 lot permit application because of the endangered species on the property.



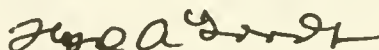
At sixty five years of age and \$300,000.00 already spent since 1973 I am left with vacant ground I cannot use or develop. I also am facing the prospect of spending substantially more money and time (now more dear to me) to pursue what I consider my just legal remedies.

I have spent the last 23 years of my life with this property in the condition I purchased it, unable to use or develop it like my neighbors and unable to obtain any economic benefit from it. The rabbit and the silver rice rat may very well be endangered, but their choice of my property as their habit has also endangered me and the financial welfare of my family. My property has been turned into a game preserve for these species.

These two species were not even listed until long after I obtained all State, Local and Federal permits. They weren't considered as inhabiting this property until after Monroe County granted its approval. I clearly had reasonable investment backed expectations of developing this property when I purchased it, and these investment backed expectations have been destroyed by the application of the provisions of the Endangered Species Act. Corps would have granted the 16 lot permit plan but for that Act, but could not legally do so under the 401(b) guidelines after U.S. Fish and Wildlife found jeopardy.

It is the Endangered Species Act that has prevented me from obtaining any viable economic use of my property. If it is in the public interest to protect these two endangered species, then the price of doing so should not be borne by individual property owners like myself but should be a public expense and responsibility.

Respectfully submitted,



Lloyd A. Good, Jr.

Testimony by  
Faith Thompson Campbell, Ph.D.  
on  
Implementation of the Endangered Species Act  
as Regards Endangered Plant Species  
before the  
Committee on Natural Resources

20 March, 1996

Thank you, Mr. Chairman, for the opportunity to discuss implementation of the Endangered Species Act (ESA) as it has been applied to endangered plant species. My name is Faith Campbell. Between 1978 and 1994 I closely followed implementation of the ESA, particularly with regard to protection of rare plant species.

America's native plant heritage is under siege. More than 200 species of plants have become extinct in the United States since the early 1800s. The decline continues. Another seven hundred species of plants are listed under the ESA or proposed for listing.

Yet plant species receive little assistance from the agencies responsible for implementing the Endangered Species Act -- or from the Congress.

As you know, the ESA does not permit listing of geographically separate populations of plant species; plants may be listed only if the species or subspecies is imperilled throughout its range. This stricture has prevented listing of Montana populations of whitebark pine (*Pinus albicaulis*).

Furthermore, the Section 9 "taking" prohibitions do not apply to plants. Consequently, the landowner may destroy listed plants with impunity. Section 9 does prohibit interstate commerce without a permit; collecting plants from private lands without permission of the landowner; or collecting or vandalizing listed plants on federal lands. These latter provisions assist the property owner in protecting his or her possessions.

Listed plant species are included in Habitat Conservation Plans (HCPs) because of the requirement that such plans go through a Section 7 consultation. When the lack of protection under Section 9 is combined with inclusion under HCPs, the result is a perverse incentive for the landowner to destroy any listed plants before initiating negotiation of an HCP.

The weaknesses of the Act with regard to plants have been compounded by timid or reluctant implementation.

The first manifestation of lagging implementation has been in the slow listing of plant species. Listing of plant species began in 1977, after completion of the Smithsonian Institution's report. After an initial spurt (the number of plant species listed reached 50 at the end of 1979), the Fish and Wildlife Service (FWS) listed only 25 more species over the next three-and-one-half years. Listing picked up to a pace of two or three per month until 1988, then slowed again until April 1991. Listing then sped up as the Service addressed the long-neglected backlog of species in Hawai'i and other states. At present, plants constitute 526 of the total of 960 U.S. species listed (434 are animals). Plants have outnumbered animals only since February 1994.

Even after they were listed, plant species were often neglected. Preparation of recovery plans lagged. While plans have been prepared for sixty percent or more of all listed animal species, such preliminary steps have been completed for only 40 percent of listed plant species. Worse, plant recovery efforts have been chronically deprived of funds.

Although the Act states that in developing and carrying out recovery plans, the FWS should "give priority to those...species, without regard to taxonomic classification, that are most likely to benefit..." the FWS has resisted giving greater attention to plant species' recovery. Members of Congress have also contributed to the problem by "earmarking" funds for the most popular or controversial animal species.

In 1990, when endangered plants made up 41% of the listed species, they received a mere 8% of recovery funds spent by the FWS. Plants received just 3% of grants to the states (Section 6) funds. Nearly 70 endangered plant species (over one-quarter of listed species) received no FWS funds at all. While I have not been able to obtain summary data for a more recent year in the time available to me to prepare this statement, there is no reason to believe that the situation has improved. In 1993 the Pima pineapple cactus was the plant receiving the largest amount of recovery funds. I ranked number 67 with spending at \$392,000. The greatest expenditure was for the Snake River spring-summer chinook -- \$18 million.

Ensuring conservation and recovery of endangered plants is usually less expensive than conserving some of the large or wide-ranging animal species. However, all would benefit from some attention and some will require extensive research, propagation efforts, and aggressive protection programs.

Although listed plants receive full protection only on federal lands, I believe it is still true that no wildlife refuges have been acquired for plants. Antioch Dunes in California and Ash Meadows in Nevada harbor endangered plants and were acquired at least in part for that reason.

Inclusion within a refuge may not guarantee protection, particularly in areas where there is an imminent threat from exotic species or other difficult-to-control factors.



The spread of invasive exotic species into new environments are a significant threat to our Nation's biological diversity, including specifically endangered plants. All of the approximately 200 listed Hawaiian plant species are threatened by one or more exotic species, particularly feral pigs, goats, and sheep, and alien plants such as banana poka vine. In Florida, Kathy Craddock Burks of the Florida Department of Environmental Protection has identified numerous listed species that are affected. By climbing over the ground, shrubs, and trees, Japanese climbing fern (*Lygodium japonicum*) is threatening the habitat of more than 32 listed plant species in Appalachian National Forest. On Eglin Air Force Base, 60 listed plant species are threatened by invasions of Cogon grass (*Imperata brasiliensis*), Japanese honeysuckle (*Lonicera japonica*), and Chinese tallow tree (*Sapium sebiferum*) as well as feral pigs. Alien plants also impede management intended to benefit rare plants. Prescribed burning to enhance five federally listed fern species in the pine rocklands of Dade County has been hindered by favorable response to fire of Burma reed (*Neyraudia reynaudiana*) and Old World climbing fern (*Lygodium microphyllum*).

Endangered animals are also harmed by alien species. If not checked, the spread of *Melaleuca* throughout the Everglades will eliminate the habitat of the endangered snail kite (*Rostrhamus sociabilis plumbeus*) by replacing open water and sawgrass prairies with an impenetrable tangle of tree branches. The threatened grizzly bears (*Ursus arctos horribilis*) of Montana face a double threat to their food supplies caused by alien species. The large seeds of the whitebark pine (*Pinus albicaulis*) provide about half the fat in the diet of the bear in the Yellowstone ecosystem; their nutritional importance is probably similar farther north. In Glacier National Park and the Bob Marshall Wilderness, more than 90% of the whitebark pine trees in some study plots have been killed by the introduced disease, white pine blister rust (caused by the fungus *Cronartium ribicola*). At lower elevations, herbaceous species eaten by the grizzly and its prey are beginning to be displaced by invading rangeland "noxious weeds". Knapweed (*Centaurea* spp.) already occupies thousands of acres of the Selway-Bitterroot Wilderness, and outbreaks have been found in portions of the Bob Marshall Wilderness.

Butternut or white walnut (*Juglans cinera*) formerly grew in scattered populations from New England to Minnesota and as far south as North Carolina and northern Alabama. Since the late 1960s, butternut canker caused by the fungus *Sirococcus clavigignenti-juglandacearum* has infested populations in most if not all of the species' range. Butternut will not sprout from the root crown when the top is killed by cankers, so time is rapidly running out to find a cure. The U.S.D.A. Forest Service leads a cooperative program in which scion wood is collected from trees that appear to be resistant for further evaluation. Grafted stock from 148 trees is now being grown in 14 states. Scientists are also studying whether insects play a role in dispersing the fungus and causing infection.

Two firs found only on mountain tops in the southern Appalachians are threatened with extinction by an introduced insect, the balsam woolly adelgid (*Adelges piceae*). The northern bracted balsam fir (*Abies balsamea* var. *phanerolepsis*) is restricted to two mountain tops in northern Virginia. Because of the adelgid infestation, the only mature population covers less than one acre.

Similar devastation has visited the Fraser fir (*Abies fraseri*), found at high elevations in the mountains of North Carolina and Tennessee. Mature trees have been eliminated from many locations. Although immature trees still persist in significant numbers, these are attacked as they age. The species may have lost its reproductive potential.

These species, although rapidly disappearing, have not yet benefitted from listing. Because the Endangered Species Act does not allow listing of populations of plant species, whitebark pine in Montana is not eligible for listing -- despite the ecological damage caused by its loss. The butternut and Fraser fir were "Candidate 2" species for several years; they remain in legal limbo. The northern bracted balsam fir subspecies has never been considered a candidate for listing under the Endangered Species Act.

Executive Order 11987 instructs executive agencies to restrict the introduction of exotic species. Unfortunately, it has never been enforced. Harmful wildlife provisions of the Lacey Act and the powers of the federal and state "noxious weed" laws have rarely been used effectively to protect native plant species.

Protection for plants lags even in law enforcement. The Act assigned the Fish and Wildlife Service authority to enforce interstate trade regulations and the Agriculture Department jurisdiction over exports and imports. Neither has a strong enforcement record. As of September 1988, the FWS had brought no cases under the ESA. At least five plant trade cases have been successfully brought under the Lacey Act. The USDA delayed eleven years before issuing final regulations to implement the program. In the period 1981 - 1985, Agriculture never asked the Department of Justice to initiate a case.

The major federal land-managing agencies have a legal obligation under Section 7 of the ESA to utilize their programs to promote recovery of listed species on their lands. To adjust their activities in order to protect listed plants, these agencies need to have adequate numbers of botanists in the offices where land-use decisions are made -- e.g., each national forest or National park, or each BLM District office. Such an expansion runs counter to recent trends of reducing these agencies' budgets and personnel ceilings.

Thank you for the opportunity to review the history of plant protection under the Endangered Species Act.

WRITTEN TESTIMONY OF RUSSELL J. GALLIAN,  
WASHINGTON COUNTY COMMISSIONER (UTAH)  
REGARDING FEDERAL ENDANGERED SPECIES ACT

On behalf of the citizens of Washington County, we appreciate the opportunity to provide our point of view with respect to the actual problems encountered with the Federal Endangered Species Act from the firing lines of local reality. It would be our understanding that the major reason that we have been asked to testify before the Resources Committee is because of our extensive experience with the Endangered Species Act and, in particular, with Habitat Conservation Plans ("HCPs"). Washington County Utah has become an environmental focus area because of its high Federal ownership (about 80%), and its beautiful red rock backdrops in Zions National Park. Washington County currently has ten listed species, including four fish and the Desert Tortoise. There are also approximately fifty species on the candidate list, some of which are likely, under the current rules, to be listed in the near future. Accordingly, Washington County has had the unfortunate experience of being one of the most heavily impacted Counties in the United States.

We have undertaken two major environmental efforts. First, in February 1996, Washington County received a permit under §10 of the Act to establish a Habitat Conservation Plan allowing the take of Desert Tortoise in our area in exchange for substantial mitigation, primarily in the form of establishing an approximate 60,000 acre preserve. A complete copy of our Plan, as well as the related Environmental Impact Statement is already in the hands of the Committee. We adopt that plan as part of our testimony.

Our Habitat Conservation Plan represents over five years of gut-wrenching effort, including the expenditure of over 1 million dollars to get the Plan approved. Approximately 9 million dollars will be expended by Washington County in cooperation with other local municipal authorities over a 20 year period to try to make this plan work. The Federal Government will be putting up over 200 million dollars worth of its property to provide for exchanges of private, and Utah State School Trust Lands to establish the preserve. These land exchanges are the major mitigation feature.

Secondly, Washington County, through its Washington County Water Conservancy District is working on establishing the Virgin River Management Plan in cooperation with applicable Federal and State Agencies, including the Fish and Wildlife Service. This Plan is in effect a Habitat Conservation Plan which deals with fish and river related species. In addition, the Conservancy District has entered into a Conservation Agreement which fortunately resulted in stopping the listing of the Virgin River Spinedace. Thus, Washington County has had as much experience with the Endangered Species Act as perhaps any other county in the United States.



## THE VALUE OF HABITAT CONSERVATION PLANS

Having recently received a permit for perhaps the most complicated Habitat Conservation Plans ever approved, Washington County is in agreement with the premise that habitat conservation plans represent the reasonable way to deal with the recovery of species and protecting biological diversity.

It is in the best interests of the people of the United States, including states, local governments, federal government and private land owners to try to work in partnership to preserve biodiversity and recover saveable species.

Having made that statement, let us emphasize that the current Endangered Species Act, as regulated and implemented by the Fish and Wildlife Service, makes it difficult, if not impossible, to achieve that lofty goal. Conservation of endangered species or, indeed, providing for the healthy survival of natural wildlife, is best accomplished in an atmosphere that promotes a healthy economy founded on the principles of respect for voluntary involvement of local communities. Perhaps the biggest problem that we have seen with the actual regulation of the Endangered Species Act by the Fish and Wildlife Service is their draconian use of the Act to take people's private property without compensation and, in some cases, to insist upon totally unreasonable mitigation that keeps an owner from being able to use all, or part, of their property. It is unnecessary and counter-productive for the Federal Government to destroy local economies, or any individual economically, in their quest to protect species. Indeed, it is our experience that the Endangered Species Act is being used by the Fish and Wildlife Service and environmental groups not necessarily for the preservation or enhancement of any particular species, but as a tool for second agenda purposes. These include stopping healthy growth, stopping reasonable development of natural resources, and making it more difficult for us to develop necessary water, particularly in the desert environment that we must contend with.

We request that you restore some balance to the Act which, in its conception, was a good idea, but in its actual implementation, has become a nightmare for hundreds of communities around the United States. This nightmare will only worsen as the extreme environmental community continues to use this misinterpreted Act to further their second agenda purposes of stopping development.

We endeavor to make suggestions to the Committee to improve current Endangered Species Act legislation. *We make these suggestions not just to obtain relief for our people, but to insure that the Act will fulfil its purpose of assisting threatened and endangered species in surviving.* The reality that we see is that once these species are listed, the practical results of the listing are often counter-productive to the survival of the species. In short, there

is a better way to preserve biodiversity and give reasonable and workable partnership solutions with state and local government and the affected private property owners. To this end we make the following suggestions supported by examples of our actual experience. We also wish to boldly state that the regulations promulgated by the Fish and Wildlife Service under the Act, are probably more of the problem than the Act itself. And, finally, the arrogant and draconian manner in which the officials of the Fish and Wildlife Service interpret and carry out the Act is the biggest problem of all. This, by itself, practically killed our HCP and continues to harbor distrust and promote inefficiency in implementing the HCP.

#### SUGGESTIONS FOR IMPROVEMENT OF THE ENDANGERED SPECIES ACT

##### 1) *Clarify and Protect Private Property Rights*

Private property rights must be clarified and protected. In our case the Fish and Wildlife Service have approved an HCP that requires the procurement of 13,000 acres of State School Trust Lands and 7,000 acres of private lands. By reviewing the maps of our area, it is easy to see that much of this property stands immediately adjacent to other developed property and, in many cases, significant portions of this acreage were already mastered planned for golf courses, communities, thousands of homes, with all the rights-of-ways and water and utilities secured.

The Federal Government has taken the position that the private property to be acquired must be devalued, because of listing the Desert Tortoise! Essentially the Federal Government is saying: We want you to voluntarily exchange or sell your property to create a preserve while we devalue your property in the process. It is our view that the Constitution of the United States clearly supports compensation for this. Unfortunately, the Courts have not always seen it this way and legislation is necessary to correct this. Biodiversity can only be preserved by creating habitat areas for the specie that are managed for their benefit. It is rather obvious that if the Federal Government desires to establish a preserve that it cannot do so without compensating owners. If the Federal Government is allowed to continue to list animals and place critical habitat designations on private property without compensation, those private property owners will simply not cooperate, and the Plan cannot be accomplished. We are still facing this situation inasmuch as we have not completed any significant purchase or trades in our HCP. Indeed, our HCP will ultimately fail if we are unable to complete the trades. Our people will not stand for receiving less than a fair price for their property. Accordingly, if the Federal Government truly desires to have *Habitat Conservation Plans* work, it cannot expect them to work unless it is willing to pay the price of obtaining the property necessary for successful plans.

2. *Eliminate the Requirement for NEPA Compliance in Establishing HCPs.*

It is our feeling that NEPA should be eliminated entirely because it has had the effect of creating virtual gridlock in all Federal land management decisions. In our case, NEPA compliance added almost a year to our process and about \$100,000.00 in costs. In the case of our HCP, we did not have a significant opposition from the environmental community. This is why we were able to get it done as "fast" as we did. Had there been the usual appeals and litigation from the environmental community, we would not have the HCP done to this day, which would have killed it. *Inasmuch as the HCP process is largely a voluntary process, particularly when you consider the involvement of local and state government, Congress should make it easier to establish HCPs not harder.* The paperwork involved in NEPA compliance, and the potential for extensive extended litigation is unreasonable, unnecessary, and cost prohibitive. There were many times during our process when we threw up our hands and almost quit. NEPA compliance causes that kind of reaction. I can truly tell you that the NEPA compliance process is the hammer that the environmental community uses to try and get its way and to raise funds for its causes.

3. *Require That the Decision Making Process of the Fish and Wildlife Service be Based on Objective Scientific Data and Logical Reasoning.*

A process must be in place where the so-called scientific reasoning can be challenged. Peer review is fundamentally essential. Our actual experience with the Desert Tortoise and our HCP is that the best scientific information available (according to the Fish and Wildlife Service) is basically whatever Fish and Wildlife says. A good example is the Critical Habitat Designation that was placed in our area. A junior-level biologist for the Fish and Wildlife Service set the parameters for the critical habitat in our area with inadequate science. She essentially took the areas of the preserve that the Fish and Wildlife Service wanted, painted a fairly significant boundary around them and called that critical habitat, notwithstanding our pointing out to them with copious information that massive areas of the critical habitat designation had no known tortoises in it! Areas that we had set aside in the plan for the purpose of providing for other species, or for providing for new areas for translocation of the Desert Tortoise were included as critical habitat. Not only did the Fish and Wildlife Service not have the scientific basis for doing that, they affirmatively knew that there was no tortoises in literally thousands of acres that they called critical to the survival of the specie. This is only one example. During the course of preparing our HCP, the Fish and Wildlife Service changed its position on significant issues we thought we had mutually agreed to. The Fish and Wildlife Service is a rogue agency that operates completely independent of supervision. This leads to the situation we have



now of power abuse. Our view is not unique. Other Federal land managers and, in particular, the BLM, frequently disagreed with Fish and Wildlife Service positions. What we have found is that sayings and doings of the Fish and Wildlife Service are largely based upon speculation or, in some cases, are a pure fabrication. We will have more examples of this in the following points.

4. *The HCP Should take Priority Over §7 Consultation Privileges of the Fish and Wildlife Service (in other words, "a deal is a deal." [Bruce Babbitt])*

The Fish and Wildlife Service takes the position that they can make decisions completely the opposite of what had been agreed to in our Habitat Conservation Plan, under the theory that they have consultation privileges on Federal ground (i.e. BLM). For example, when we put through our HCP, we had agreed that a certain area, known as the Babylon area, which was added into the plan as a potential translocation site (it currently has no known tortoises on it) was permissible to allow historical grazing rights to be utilized. Accordingly, we did not provide for any money in our budget to buyout these unfortunate grazers. The Fish and Wildlife Service is now taking the position, that the BLM is required, in connection with the consultation process, to revoke these grazing permits in this area on the theory that it is interfering with the Desert Tortoise (even though the Desert Tortoise does not exist on this ground). This refers back to Bruce Babbitt's famous statements "a deal is a deal." What we find in real life is a deal is not a deal. We have a plan that has only been in effect for a period of weeks and we are already seeing that the Fish and Wildlife Service does whatever it pleases. We can assure you that this puts a dampening effect on anyone's desire to do an HCP. You can spend years of effort and hundreds of thousands of dollars only to find that the Fish and Wildlife Service is not bound to their own permit (or, at least, they so claim).

5. *Introduce Human Needs and Economics Into the Equation of Evaluating Whether a Species is Listed and Whether any Particular Mitigation is Reasonable Under the Circumstances.*

In the case of Washington County, we have always questioned whether or not the Desert Tortoise should have been listed in the first place. It is a species that exists in a very vast area, by the hundreds of thousands of animals. It is in our view that where declines are being noted in a particular species (which is the reason that the Desert Tortoise was listed in 1989), that other things should be tried prior to locking up massive areas.

In general, the Fish and Wildlife Service's view of mitigation is extremely unreasonable, has virtually no standard by which to measure it against and often results in extreme hardship. One would have to wonder whether or not our HCP would ever occur if

subjected to the light of reasonable economics. Washington County (whose entire general fund budget is approximately seven to eight million dollars per year) will be spending 9 million dollars over the next twenty years on the Desert Tortoise. This is in furtherance of a take permit of approximately 1,600 animals (which we personally believe will never occur), in an effort to assist in a population estimated at a little over 8,000 animals. Perhaps the most stunning numbers, however, is the fact that the Federal Government, if it completes its part of the deal, will be trading (or spending) probably over 200 million dollars worth of its own property in order to complete fair market value trades. The property that will be used to accomplish this will be property that has been identified as appropriate for disposal by the Federal Government (in other words, property that you can sell and use the money for other purposes). In exchange, it will receive property that will be designated as critical habitat and has no traditional economic value. It will, of course, have tremendous habitat and biodiversity value, but the real economic cost of our program cannot be ignored.

6. *Fish and Wildlife Service Should be Compelled During the Process to Provide Meaningful Consultation and Advice that Communities Can Rely on.*

One of the reasons that our Plan cost so much and took so long is because we could not obtain the reliable feedback from the Fish and Wildlife Service during the process. Indeed, when we got what we thought was feedback, we found later that the answers were so completely different than anything that we had ever discussed, we wondered if we had showed up to the same meetings as the Fish and Wildlife Service had. After we had submitted our first Plan in December of 1992, involving some 44,000 acres of property, the following April we were stunned to receive a reply which would require us to set up the preserve for almost 80,000 acres of property. This included massive areas that we had never even discussed before. Another example is the Fish and Wildlife Service at one point, required that we euthanize any taken animals, a position that we never felt particularly comfortable with especially considering the nature of the Desert Tortoise. We did not understand why so-called "taken" animals would not be given a chance for survival, particularly considering the massive areas of our preserve. Nevertheless, we were required to do that by the Fish and Wildlife Service. Sometime later we found out that they had taken some heat from animal rights advocates and completely changed their position and said that we would only euthanize diseased animals.

7. *Listing of Animals Should Only Occur Where Absolutely Necessary and After a Recovery Plan has been Peer Reviewed.*

The effects of a listing on a specie can be devastating, not only to mankind, but to the specie itself. It would be far preferable to work in partnership with state wildlife agencies, local governments and interested private individuals with assistance and adequate funding from the Federal Government to figure out ways to conserve the species prior to having them listed. We also believe that where reasonably possible, that conservation agreements should be multi-species in nature because these animals are often interdependent, share the same habitat or other living sources (such as streams and rivers), and positive management for one specie is often a positive help for another specie (with respect to fish, for example). However, a plan which involves bigger areas and multiple species may be more difficult and expensive to do. Accordingly, the Federal Government should offer incentives in connection with approving such types of agreements, including but not limited to, financial incentives and incentives to stop species from being listed, and incentives to private property owners to cooperate, including the possibility for tax credits and estate and gift tax relief.

8. *Captive Propagation of a Species Should be Legislatively Encouraged.*

A number of times during the preparation of our HCP, the possibility for reproducing and releasing tortoises was discussed and every time the issue was brought up it was brushed aside by the biological community and the Fish and Wildlife Service. We frankly believe that the reason they have taken this attitude is because they realize that it will work and if it works it will lead to the quicker delisting of species and the loss of their power. A good example of this is the Sea Turtle in the Caribbean. On the Cayman Islands there exists a very successful project which has virtually brought the Sea Turtle back from the brink of extinction. The Sea Turtle was down to 200 to 300 known animals a number of years ago when the project was started to try to assist the species in raising its young to a point where it could better survive in the wild. It is a creative program that involved not only propagating the species, but utilizing the products of the animals in an actual turtle ranching operation to help pay for it. This kind of project could probably never occur under the Endangered Species Act. The Desert Tortoise, for example, is a species that would be very susceptible to this kind of effort. Scientific information that we have acquired indicates that a very high percentage of young desert tortoises do not survive in the wild primarily due to predation. Through careful and scientific management, the number of young that could survive to young adulthood and then be turned out could be greatly enhanced. In fact, the Bureau of Land Management, prior to the listing of the



Desert Tortoise, did just that. They grew Desert Tortoises in our area and put them out in areas that included private property. These areas are now considered critical habitat. We have reason and logic on our side that many species could benefit from this kind of approach and we see no reason why the Desert Tortoise could not. Notwithstanding this issue being brought up many times during our HCP process, it was consistently rejected by the Fish and Wildlife Service for the reasons that I have stated above. If we were able to save these species through this method, they would not have the ability to list the species. If they do not have the ability to list a species, they loose their power. The great power of the Endangered Species Act, as is currently being used, is being able to deny people the right to use their property, or to be able to restrict the Federal Governments land managers (BLM, Forest Service, etc.) and their use of the property for legitimate multiple use.

9. *Legislation Needs to Strengthen and Make Binding Deadlines Established for the Completion of Consultation.*

The Fish and Wildlife Service, even if it has a statutory imposed deadline to observe, ignores these and boldly tells you that if you push them on the deadline, they will simply give you an adverse biological opinion. Legislation should be enacted requiring that the agency meet their deadlines or cause that the action would deemed to be in compliance.

10. *In Connection with Attempting to Recover Species, the Law Needs to Provide for Truly Risk-Free Introductions Into New Areas.*

One of the biggest fears that local government and private property owners have with experimental programs, or reintroductions of species or expansions of areas of habitat, is the general view that once the animals are on your property, they own your property. In reality, the actions of the Fish and Wildlife Service tend to support this sadly amusing view as reality. A good example of this is the current attempts to reintroduce the California Condor in our area. Based upon maps that have been produced by the Fish and Wildlife Service, they expect the range of the reintroduced Condors to go into Southern Utah on a boundary dotted by Interstate 15 (why this boundary has been set, makes no logical sense to us, but, nevertheless, that is the reality). The Fish and Wildlife Service does not clarify in their rules what the affect will be, or the protection accorded to these animals that are theoretically scientific and experimental. Virtually no one would have the problem of the reintroduction of these species if the introduction was truly without risk to private property owners, or for example, public works projects. The problem is that the Fish and Wildlife Service tells the public that there will be no problem, that they are experimental, non-essential, and then they turn right around and say that they have the same protective status as a threatened

animal. Anyone who is familiar with the Act is aware that the protection accorded to a threatened animal is virtually the same as an endangered animal. If the Fish and Wildlife Service wishes to expand habitat into a new area, or wishes to introduce into a new area for experimental reasons, it should be clear that there will be no long or short term adverse economic effects from this. This would remove most of the objections that there would otherwise be to such projects.

11. *Congress Needs to Legislatively Limit the Greatly Expanded Standard for What Constitutes "take" of Animals and Habitat as Currently Administered Under the Regulations of the Fish and Wildlife Service.*

This issue needs to be addressed because the Supreme Court supported the position of the Fish and Wildlife Service in the famous Sweet Home case. Essentially, the Fish and Wildlife Service expands its control over areas that it deems to be habitat when, in fact, the relationship to the habitat is minimal or nonexistent. The most famous example of this, of course, is the Spotted Owl. Our experience is similar. When our critical habitat designation was put on, as indicated in the earlier testimony, there were massive areas for which the Fish and Wildlife Service had absolutely no evidence that the animals were present or anywhere near the property. Indeed, some of the areas that they included were above their known range (over 4,000 feet) and some areas were included where the animals could not physically go unless they were physically carried there by humans (for example, the Babylon area previously testified to). Fish and Wildlife Service likes to rely on the general theory of gene flow corridors between known habitat areas. In our experience, they use that theory to generalize for massive corridors in property for which they have no scientific evidence. Indeed, the evidence in our area better points to the fact that the animals in the developed portion of Washington County probably got there not because of natural migration, but because of being carried there as pets. Although it is impossible to prove that premise one way or another, it is clear that some of our local population of Desert Tortoises were transported here as pets and released from homes or merely dumped when they were not sold to the public. The Fish and Wildlife Service takes the attitude that it does not matter how an animal gets to any particular place, once it is there it is their habitat, and their home and they will be protected. The potential for environmental terrorism is obvious. We have already had incidents of that in our area. Some of our local citizens have been almost financially ruined by having animals "found" on their property, followed by an anonymous telephone call to the Fish and Wildlife Service.

12. *Give Credit in Habitat Conservation Plans for Animals that are "taken", but Nevertheless Saved.*

Under the rules of the Fish and Wildlife Service, an animal is

deemed "taken" under a take permit if you do nothing more than pick it up and move it. Under the terms of the permit, the undocumented idea behind this, as we understand it, is the contact with humans may somehow taint the animal for reintroduction into the wild. Accordingly, such animals are required to be put in an experimental situation somewhere else. We have no problem with segregating these populations until better knowledge is gained about this. However, all of these animals are considered "taken," and therefore presumed legally dead, even though they are very much alive and transferred to another suitable habitat. In the case of the Desert Tortoise, since so many of them already were pets, it is very obvious that the animal has done just fine having had some human contact. Indeed, as we indicated above a good number of the tortoises in our area were grown by the BLM in the captive breeding program prior to the listing of the animal. These animals are significant parts of the existing populations today. A good deal of effort is going to be put forth in order to help save these animals, even though they are deemed taken and experimental in nature. Credit should be given for this in the overall view of the species preservation.

13. *Critical Habitat Should Not be Designated on Private Property Without the Consent of the Private Property Owner or Without Payment of Compensation.*

The prior administration did not, generally speaking, designate critical habitat on private property. The current administration has taken it upon themselves to do just that. The designation of critical habitat on a piece of private property essentially sentences that property to economic oblivion. The Fish and Wildlife Service boldly argues that a critical habitat designation has no affect on private property unless there is a federal nexus. What they fail to tell the public in their public pronouncements however, is that under §9 of the Act, if you disturb their habitat, or harm or harass the animals in any way, (including habitat modifications), you are in violation of the Act and they will take action against you. This kind of double talk is part of the problem. The reality of this situation is if you are painted into critical habitat for any particular animal, the only way that you can do anything on your property is by doing a private HCP on your property and get relief under §10. You are then subjected to the standardless and unreasonable mitigation standards of the Fish and Wildlife Service which renders your property far less valuable than it was before. The Regional Solicitors for the Fish and Wildlife Service have indicated to us that they have no problem with this, that as long as any teeny portion of your property is otherwise useable, then they do not consider this to be a taking under the Constitution. Indeed, there is some logic to their argument based upon the court cases that have followed their theory. Accordingly, it is up to Congress to fix this vast inequity. Especially in the west, where there is so much public land, we see no reason to subject private property owners to these kinds of problems.



Indeed, we view this as a Federal policy and if Federal policy is going to economically damage a piece of private property and, if it is otherwise necessary to do so because of the species, the Federal Government should compensate these people. It is perhaps this one point alone that cause much of the contention about the Act.

14. Provide for a Reasonable Cost-Sharing Formula and Actual Funding, or Provide for Corresponding Relief.

The Endangered Species Act is a particularly cruel, unfunded mandate. We believe that local and state governments are willing to do their part, but Congress should recognize that this is indeed a Federal policy that carries with it a potentially huge unfunded cost. If the Federal Government is not willing to do their part because of budgetary restraints, then it should not also impose the restrictions that go along with the Act. There ought to be some kind of a process that if relief cannot reasonably be obtained, in an economic way, that the sanctions of the Act be lifted or relaxed. One of the biggest problems with the Endangered Species Act is its black and white, all or nothing approach to protection of species. There are many middle ground measures that would do a lot of good at a reasonable economic cost. Because of the black or white nature of the Act, very often times nothing gets done because the solutions desired by the Fish and Wildlife Service are simply too expensive. That is why we say that when a species is listed, it is probably doomed because, in most cases, little or nothing is done other than to provide physical protection for the animal and its habitat. While the physical protection of the animal in its habitat is in some cases valuable, in many other cases, there are numerous other reasons why this species is disappearing that the law can do nothing about. If you really want to recover these species, then creative ways need to be addressed to do affirmative action, otherwise, the species will be lost. Affirmative action may require creative solutions such as occurred with the Sea Turtle in the Grand Cayman Islands. These kinds of positive and creative efforts are simply difficult, if not impossible, under the current Act.

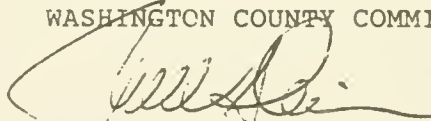
#### CONCLUSION

The Endangered Species Act needs to be set up so the management and preservation of species is truly a partnership between the federal, state and local governments, and interested private entities. The process that we must currently endure with HCPs is difficult and offensive because of the dictatorial powers of the Fish and Wildlife Service, their lack of being held to any particular scientific standard, and their failure to take into account reasonable human needs and economics in most cases. All of these elements need to be introduced into the working of the Act in order to make it actually work.

We certainly appreciate the opportunity to relate our views to Congress. We are on the battle lines. We represent the people who must actually struggle with these issues on a day-by-day basis. We are not removed from the action, we are in the action. It seems to us that this particular Act, as currently administered, has been a failure. Whatever successes that the Fish and Wildlife Service can point to in their so-called down listing decisions are relatively minor compared to the tragedy of the economic destruction that this Act has foisted upon the people of this Country. The idea behind the Endangered Species is a good one. The implementation of Habitat Conservation Plans on a reasonable basis should be a good way to protect and preserve all sorts of species, not just threatened and endangered species. We believe in the concept and we have put our money where our mouths are toward that end, but the process need not be as difficult as it has been. We should not have to view our Federal Government, and in particular, the Fish and Wildlife Service as our enemy, as we currently do. We should be able to view them as our partners instead of our task master. The fix for this problem is in the hands of Congress and we respectfully request your assistance in adopting the suggestions that you find have merit.

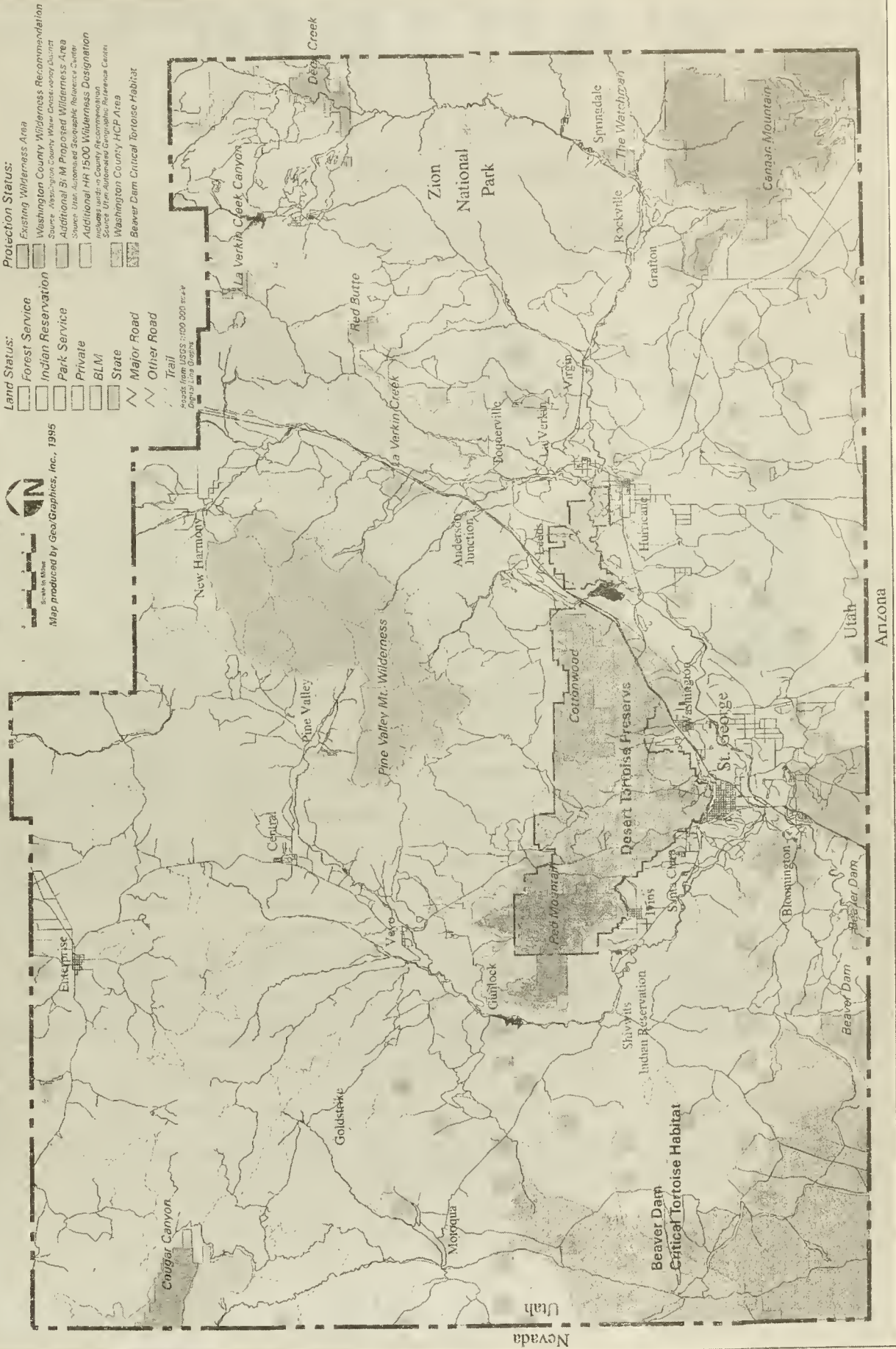
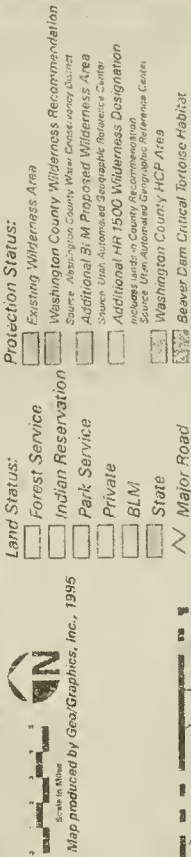
We thank you for this opportunity and we stand ready to supplement our testimony with any additional information which you may require.

WASHINGTON COUNTY COMMISSION



Russell J. Gallian  
Commissioner

# Washington County, Utah





# WANTED!

## ALIVE

Pyrgulopsis bruneauensis

Alias

**BRUNEAU HOT SPRINGSNAIL**



**\$500.00**

**REWARD**

**\$500.00**

FOR INFORMATION LEADING TO THE VERIFICATION OF LIVING ANIMALS IN AN AREA OUTSIDE OF THE BRUNEAU RIVER DRAINAGE, OWYHEE COUNTY, IDAHO.

HEIGHT: LESS THAN 1/8 INCH OR 3MM (SIZE OF A BB SHOT)

WEIGHT: 0.05 GRAMS (VERY SMALL)

COLOR: CLEAR SHELL BUT APPEARS BLACK BECAUSE OF FLESH PIGMENTATION

DESCRIPTION: Pyrgulopsis bruneauensis (Gastropod: Hydrobiidae), globose-low conic shell, 3.75 to 4.25 whorls; amber, thin, narrowly-ovate operculum.

KNOWN LOCATION: Warm springs (ie., 60 to 96 F°) draining into the Bruneau River, Owyhee County, southwest Idaho.

**-WARNING-**

**THIS IS A FEDERALLY-LISTED ENDANGERED SPECIES  
ALL LEGAL PROTECTIONS APPLY!!!**

1st confirmed colony from each additional river drainage will qualify for reward.

For more information or to report possible sightings call: 1-800-88-SNAIL or Rayola Jacobsen Idaho Farm Bureau Boise Idaho (208) 342-2688

Supplemental Comments of the  
MO-ARK Association  
P.O. Box 35024  
Kansas City, Missouri 64134

Respectfully submitted to the *U.S. House  
of Representatives, Committee on Resources*  
on March 20, 1996 by:

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51 Corporate Woods  
9393 W. 110th Street, Suite 500  
Overland Park, Kansas 66210  
Counsel to the MO-ARK Association  
(913) 541-1314

It is a privilege to appear before this Committee on behalf of the MO-ARK Association. MO-ARK is comprised of over 400 member associations, companies, and individuals primarily in Illinois, Iowa, Kansas and Missouri. MO-ARK's purposes are to promote flood control, navigation, irrigation, recreation, fish and wildlife, the environment, conservation and beneficial uses of land and water resources within the Missouri River Basin and the portion of the Arkansas River Basin that runs through Kansas and Missouri.

I am here to promote responsible reform of the Endangered Species Act (ESA). I trust that Congress will not allow debate on the ESA to be limited by the notion that anyone in favor of reforming it is opposed to the environment. Of course, this notion is not true. MO-ARK is interested in improving the ESA, not in scuttling it.

The Midwest has been dealing with a number of issues relating to the ESA. Many of these issues relate to the Kansas, Missouri and Mississippi Rivers and bottom land farms.

With respect to the rivers, the United States Army Corps of Engineers (Corps) is presently preparing a revised draft environmental impact statement (DEIS) for proposed revisions to the Master Manual for the operation of the Missouri River Main Stem System. As you know, the Missouri River rises in Montana and courses through North and South Dakota, forms much of the border between Nebraska and Iowa, and then runs along a portion of Kansas and through the heart of Missouri before it empties into the Mississippi River. The Kansas River flows into the Missouri River at Kansas City, Kansas. The DEIS, called for under the National Environmental Policy Act, is being driven by the endangered interior least tern, the threatened piping plover (birds), the endangered pallid sturgeon and other species that are candidates for listing. The operation of the Main Stem System and its authorized purposes hang in the balance including flood control, irrigation, water supply, navigation, power and recreation.

To understand how endangered species affect the rivers and bottom lands, it is helpful to review the potential impact of the "preferred alternative" that the Corps withdrew under the DEIS. Among other things, it called for a spring rise that would potentially lower the reservoirs in the upstream states, cause interior drainage problems for bottom land farmers and disrupt navigation on the Missouri and Mississippi Rivers. Of course, farmers plant crops in the spring. If their fields are

too wet at this time, the growing season is shortened or lost. If the Missouri River is too high, navigators cannot bring the necessary fertilizer upstream in the spring. Such a plan also would have exacerbated spring flooding. The Great Flood of 1993 and flooding in 1995 are recent reminders of the importance of flood control. The Corps intended the spring rise to emulate the natural hydrograph of the Missouri River to benefit native fish species. Much evidence on the administrative record for this plan shows otherwise.

The "preferred alternative" also called for reduced fall flows that would have adversely affected navigation on both the Missouri and Mississippi Rivers during the fall harvest when we need it most to ship our nation's grain. As a result, shippers (farmers) would pay more for transportation, if available, and we would be at a competitive disadvantage in the global grain market. Managed wetlands in Missouri also would suffer degradation. As stated, the Corps is currently in the process of revising the DEIS.

A look at the species driving the DEIS will show that the Endangered Species Act is in need of improvement. First, the United States Fish & Wildlife Service (USFWS) has conducted genetic studies of the so-called pallid sturgeon. These studies fail to differentiate it from the more plentiful shovelnose sturgeon. Limitations on the definition of "species" under the ESA would help ensure that we do not misdirect our resources.

Second, the endangered "interior least tern" is the same bird as the "least tern" that is more plentiful at coastal areas. Are we managing a fringe population that would naturally wax and wane with changing conditions? Defining a species "range" in the ESA also would help ensure that our resources are not misdirected.

Third, in 1995 several groups submitted a joint petition to list the sturgeon chub and sicklefin chub (fish) as endangered under the ESA. The petition did not include data on over 105 locations where such species were known to have existed. In addition, the petition ignored an ongoing (now complete) study by the Missouri Department of Conservation on the chubs. The petition caused private groups, including MO-ARK, as well as the State of Missouri to spend money collecting data that was otherwise available to rebut the petition. The process cries out for adding a qualitative component to what constitutes the "best scientific and commercial data available" in the listing process under the ESA. The flow of the Missouri River should not be altered to support specious listings of fish that are not truly endangered.

What is more, we are glad we caught the petition on the chubs. Generally, the public is ill-informed about petitions to list species. The ESA should be amended to increase public awareness of the listing process and of the designation of critical habitat.

With respect to farmland, there is an inherent conflict between bottom land farms and wetlands regulations. The ESA should be amended to ensure that it is not unlawful for a farmer to continue to farm his fields. MO-ARK respectfully requests that this Committee take a hard look at regulatory takings in the context of the ESA.

Voluntary buy-back programs including the Big Muddy National Wildlife Refuge (USFWS), the Wetlands Reserve Program (Missouri Department of Conservation), and the Missouri River Mitigation Program (Corps) offer an alternative to regulatory takings of private property. We must remember, however, that farmland is a precious resource as recognized by Congress in the Farmland Policy Protection Act. It is in our national interest to protect productive farmland.



Lastly, present regulations under the ESA pose serious consequences for bottom land farmers and their communities in times of flooding. During the Great Flood of 1993, levee districts were delayed in making repairs to breached levees because the areas they had previously designated as a source of dirt (borrow) to repair their levees had become overgrown. While their homes, fields and communities flooded, placing human life in jeopardy, agencies were making determinations about the environmental impact of cutting down trees in such previously designated areas. Wetlands mitigation banking needs to accommodate emergency levee repair. In addition, the definition of what constitutes a "take" of an endangered species should exclude the destruction of habitat on such designated land. Surely, it should be lawful to destroy habitat to protect human life.

The members of the MO-ARK Association thank you for this opportunity to convey their concerns to the Committee on Resources. I have submitted supporting documentation to your staff.

Comments of the  
**MO-ARK Association**  
 P.O. Box 35024  
 Kansas City, Missouri 64134

Respectfully submitted to the *U.S. House  
 of Representatives Committee on Resources*  
 on March 20, 1996 by:

Robert J. Vincze J.D., M.A.  
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 Counsel to the MO-ARK Association

## IMPROVING THE ENDANGERED SPECIES ACT: RECOMMENDED AMENDMENTS

### Introduction

*O beautiful for spacious skies, for amber waves of grain,  
 For purple mountain majesties above the fruited plain.  
 America! America! God shed his grace on thee, . . .*

*America! America! God mend thine ev'ry flaw,  
 Confirm thy soul in self-control, thy liberty in law. . . .*

*Thine alabaster cities gleam, undimmed by human tears.  
 America! America! God shed his grace on thee, . . .*

*America, The Beautiful*--text: Katherine L. Bates; music: Samuel A. Ward.

Congress passed the Endangered Species Act in 1973 (ESA; Pub. L. No. 93-205, 87 Stat. 884 (codified at 16 U.S.C. § 1531 *et seq.* (1988))). Unfortunately, actions taken to recover listed species to the point that they no longer require Federal protection have not been very successful. As of the summer of 1993, the Department of the Interior had delisted only twenty species: seven through original data errors (Gordon 1993). These twenty species represent less than 3.0% of the species listed (GAO 1992). Data from 1991 shows that of the sixteen species then delisted, seven were by extinction, four by recovery, and five through original data errors (Sugg 1994). This is a poor record despite the noble efforts of professionals in the U.S. Fish & Wildlife Service (USFWS).

The ESA is in need of a reform. Recovery programs have not met with much success, and the process has retarded responsible development. Any statement to the effect that the ESA has spawned few conflicts as a percentage of species listed belies the facts. As of March 31, 1995, only 53% of the U.S. species listed had approved recovery plans, and critical habitat was designated for less than 20% of the species listed in the U.S. (NRC 1995). The number of economic conflicts as a percentage of listed species with approved recovery plans and designated critical habitat are certainly high. We must amend the flaws in the ESA to preserve our amber waves of grain, purple mountain majesties,

fruited plains and alabaster cities. The law must reflect enough self-control with respect to development to ensure prosperity in the long-run yet also preserve our liberty.

This paper suggests revisions to the ESA that would aid species recovery while minimizing adverse economic impacts. The intent is to create a "win-win" outcome for the economy and the environment. Presently, the ESA is constraining growth without recovering species.

### **I. The Endangered Species Act: Recommended Amendments**

The MO-ARK Association recommends amending the ESA to (1) improve the rate of recovery of endangered and threatened species; (2) conserve critical habitat while maintaining economic growth; (3) refine the listing process and the designation of critical habitat to limit any negative impacts on private parties and permitted users of Federal Lands; and (4) increase participation in the listing and recovery process by private parties.

#### **Commercial Value and Private Conservation**

The first symbolic, though important, suggested amendment of the ESA recognizes that endangered species have commercial value. Section 2(3), "Congressional findings and declaration of purposes and policy," states in part that "species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people; . . ." Free enterprise is one of the most powerful mechanisms to preserve species. It is time for the ESA to expressly recognize the commercial value of endangered species. Therefore, MO-ARK recommends inserting "commercial" in the above phrase.

Section 10 of the ESA also should allow for permits to take species for "private acts relating to the propagation of the affected species for commercial use." This is necessary to promote commercial populations tied to conservation programs. It is the most powerful way to reduce illegal takings of endangered species: eliminate the market and profits for illegal trade.

The National Research Council (NRC) recognizes that incentives work for the federal government. "[P]ublic agencies and individual public servants on public lands behave differently from private landowners . . . because their rewards and incentives are different" (NRC 1995). The NRC cites Mann and Plummer (1995) who describe the destruction by private landowners of habitat on their land that could support endangered species so that they can avoid the prohibitions of Section 9 (Prohibited Acts) or the need for a Section 10(a) permit for incidental takings of endangered species. It may overstate its case, but the argument points out the need to offer incentives to private developers rather than to increase the potential punishment for developing habitat as suggested by the NRC. If we can turn the negative into a positive, we will have a powerful tool for preservation. Ultimately, Adam Smith's invisible hand may be the most effective tool for the preservation species. Flexible policies designed to complement local economic development and land use practices may offer the best solutions.

The United States is operating under the political realities of a budget deficit. Some authors maintain that billions of dollars will be needed to attain recovery goals for the bulk of the listed species (Jackson 1992). The Department of Interior Inspector General's 1990 estimate states that \$4.6 billion will be needed to fully recover all threatened and endangered species (Jackson 1992). This is compared to the fiscal year 1995 budget of \$39.7 million for recovery plans. It is simply not feasible for the government to raise the necessary revenues to adequately protect biodiversity. Out of



necessity and efficiency, the law must place part of the responsibility for habitat preservation in private hands and provide incentives for doing so.

One promising way to preserve habitat is to allow developers to promote undeveloped habitat as a benefit to locating within an area. Residential or commercial development bordered by blocks, and/or interconnected strips of habitat is more desirable to the tenant or prospective owner than entirely developed land. "Developers should realize people want to move into communities that have preserved the heritage of a diverse native environment, and use such preservation practices as a positive tool. . . . Since growth is unlikely to abate, the manner in which growth is incorporated into the existing environment is crucial to any preservation efforts" (Florida Business 1990). Instead of punishing landholders, habitat preservation may be rewarded with tax incentives and other offsets that, with the desirable qualities of natural habitat, will foster preservation. This approach is particularly attractive when one considers that more than 59% of land in the United States is privately owned, with about 33% under federal ownership, and about 8% under state and local ownership (NRC 1995).

In addition, other programs could be expanded and developed for purchasing perpetual easements. The nature of the easements would vary. Open land is more supportive of an ecosystem than land crisscrossed by roadways or other obstructions. For example, an easement could allow farming or oil and gas operations on a particular tract but not permit the construction of permanent improvements. The price of an easement would vary with its restrictive nature. The more restrictive the easement, the higher its price. Such programs could be developed by private entities as well as the government. Parties may utilize easements to protect the environment in private transactions. If such easements are incorporated in a conservation plan, we can maximize local economic development.

The impact of current and future programs on the productivity and quantity of our farmland must be evaluated under the Farmland Protection Policy Act (FPPA) (7 U.S.C. § 4201 *et seq.* (1994); 7 C.F.R. §§ 658.1-7 (1995)) and related legislation. It is in our national interest to preserve our amber waves of grain. The Secretary must evaluate any designation of critical habitat for its effect on farmland. Recovery and conservation plans must be integrated with existing federal, state and local farm policies (7 U.S.C. § 4203(a) (1994)). Any rule changes relating to recovery programs and the designation of critical habitat must conform with the FPPA (7 U.S.C. § 4203(a)(1994)).

With respect to timber land, conservation plans may serve timber interests best. Certain areas may be designated as timber harvest areas in a conservation plan. The growing and harvesting of timber in such areas should be considered the primary use coincident with protecting soil, fisheries and wildlife instead of the other way around.

## **Definitions**

### **Anthropogenic**

MO-ARK recommends amending Section 3 (16 U.S.C. § 1532) to include scientific standards that will serve to reduce the conflicts between development and environmental interests. We suggest adding the term "anthropogenic" to Section 3. "Anthropogenic" means induced or altered by the presence and activities of man (Webster's Third New International Dictionary, 1981, Merriam--Webster). This term is necessary to distinguish between manmade changes to the environment and those that are attendant to natural selection.

We only should attempt to save species that are in decline due to anthropogenic effects and not natural selection. Otherwise, we may spend scarce resources on recovery plans destined for failure, or what is worse, cause artificial mass extinctions. "Although all living organisms represent a continuous evolutionary lineage extending billions of years back to the origin of life, the ultimate fate of all species is extinction" (Brown and Gibson 1983). "Dinosaurs and other reptilian groups have been replaced by birds and mammals, ferns and gymnosperms have been largely supplanted by angiosperms, and teleost fishes have replaced cephalopod molluscs as the dominant group of large, actively swimming marine animals" (Brown and Gibson 1983). The evolutionary history of life can be likened to a continual race with no winners, only losers--those species that became extinct. This view is expressed in Van Valen's (1973) Red Queen hypothesis. It is based on an analogy with the Red Queen in Lewis Carroll's *Through the Looking Glass* who said, "It takes all the running you can do to keep in the same place." A species must continually evolve to keep pace with an environment that is perpetually changing, because all the other species are also evolving, altering the availability of resources and the patterns of biotic interactions (Brown and Gibson 1983). The first declaration of the ESA is that "various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation" (emphasis added, Sec. 2(a)(1)). It is proper that this declaration does not include extinction by natural selection. Application of the ESA should follow sound science and Congressional intent.

Furthermore, we suggest amending the definition of "endangered species" by inserting "by anthropogenic alteration of the ecosystem upon which the species depend" after the first portion of the present definition: The term "endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range . . ." (ESA, Sec. 3(6)). This amendment provides the important limitation discussed above. For the same reasons, MO-ARK proffers the following amendment to Section 4(a)(1)(E) of the ESA. This subsection states that the "Secretary shall by regulation promulgated in accordance with subsection (b) determine whether any species is an endangered species or a threatened species because of any of the following factors: . . . (E) other natural or manmade factors affecting its continued existence." The words "natural or manmade" should be struck and "anthropogenic" inserted in its place.

### Range

Oddly enough "range" is not defined in the ESA, yet the term is used in many important provisions of the Act, especially for the designation of "critical habitat." For the ESA to work effectively, it must define "range." MO-ARK recommends adding the following definition: "The term "range" means the area delimited by a line beyond which the selective factors of the environment prevent successful reproduction." This definition is scientifically sound. It will enhance the conservation of critical habitat, allow for economic growth, and responsibly reduce potential conflicts with private parties over the designation of critical habitat, land use and regulatory takings of private property.

The foregoing definition of "range" is offered by Mayr (1970) ("the range of a species is delimited by a line beyond which the selective factors of the environment prevent successful reproduction"). According to Mayr, this line, "called the *species border*, is one of the aspects of the population structure of species that can be understood only by taking gene flow into consideration. Single individuals may appear annually in considerable numbers beyond this line, yet fail to establish themselves permanently. Even if they succeed in founding new colonies, these will sooner or later be eliminated in an adverse season. As a result, the species border, though fluctuating back and forth,

remains a dynamically stable line. . . ." (Mayr 1970). This concept includes habitat necessary to support migratory species. If such habitat is not available, the species will not be able to reproduce.

The essential stability of the species border, on which the annual and long-term fluctuations are superimposed, would seem to contradict our belief in the power of natural selection. One would expect a few individuals to survive in a zone immediately outside the species border and to form a new local population that would gradually become better adapted under the continuous shaping influence of local selection. One would expect the species range to grow by a process of annual accretion, like the rings of a tree. That this does not happen is particularly astonishing in the frequent cases where conditions beyond the borderline differ only slightly from conditions inside the species border and where no drastic barriers prevent expansion.

The solution to this puzzle is probably that the process of local adaptation by selection is annually disrupted by the immigration of alien genes and gene combinations from the interior of the species range (Mayr 1954). This influx prevents the selection of a new stabilized gene complex adapted to the conditions of the border region. Presumably, the border populations barely maintain themselves, and the new colonists beyond the species border (in mobile species such as birds and insects) come from farther inside the species range, where conditions permit a greater surplus of individuals and the resulting increased population density stimulates emigration of individuals whose gene complex is not adapted for the conditions of the border region (Mayr 1970).

Mayr's approach contrasts with using historic data on all sitings of a species and simply drawing a circle around all such points to define its range. Resources have been and will continue to be wasted trying to save fringe populations that are not sustainable.

Defining "range" will provide more certainty to the process and will reduce conflicts over the regulatory taking of private property. The taking of private property without just compensation has been the subject of proposed legislation. These efforts to protect private property are laudable and we support responsible legislative reform. Nevertheless, such legislation risks attack on constitutional grounds since the right to just compensation arises under the Fifth Amendment of the U.S. Constitution. The issue of a partial regulatory taking, as opposed to a physical taking, has not been squarely addressed by the courts, though some language not essential to the holdings in at least two cases may favor a partial takings rule. See, *Loveladies Harbor, Inc. v. United States*, 21 Cl. Ct. 153 (1990), *aff'd* 28 F. 3d 1171 (Fed. Cir. 1994); *Florida Rock Industries, Inc. v. United States*, 21 Cl. Ct. 161 (1990), *vacated*, 18 F. 3d 1560 (Fed. Cir. 1994). Therefore, though MO-ARK supports efforts that recognize the liberty interest of the property owner, we emphasize placing responsible restrictions on the designation of critical habitat and on what constitutes a "take" of an endangered species under the ESA. This approach will minimize potential conflicts over private property and development rights on federal and private land. In light of the budget deficit and the costs of litigation, MO-ARK believes this approach is in the best interest of taxpayers and developers. Defining the term "range" will reduce the number and scope of regulatory taking issues.

#### **Best "Available" Science**

Section 4 of the ESA bases listing decisions on "the best scientific and commercial data available." This Section must be amended to include a qualitative component. 16 U.S.C. §



1533(b)(1)(A). The current language means that the Secretary of Interior can make listing decisions based on the best available data regardless of its quality and seemingly without a thorough compilation of existing data. At the very least, comparable population data within a species range as defined by Mayr *supra* should be included in the petition to list a species and in findings related to the listing process by the USFWS. "Population viability analysis is the cornerstone, the obligatory tool by which recovery objectives and criteria are identified. Yet the demographic and genetic data necessary to fuel such analyses are lacking for virtually all species for which recovery plans exist, and likewise for those in and awaiting entry into the recovery-planning process" (NRC 1995). In a 1991 review of 314 recovery plans, only about 17% of the plans contained population-size data (Tear et al. 1993). One would expect population data to be the cornerstone of the listing process, yet such appropriate data is often not presented. Without such data it is impossible to objectively measure the status of a species (*see* Somach 1994).

MO-ARK recommends replacing the phrase "best scientific and commercial data available" in Sections 4(b)(1)(A) and (3)(B)(iii) with the phrase "best reasonably obtainable scientific and commercial information including historic population data within the species range." Section 4 of the ESA provides the basis for the Secretary to list species and to designate its critical habitat. The intent of the proffered amendment is to require the collection of relevant data from existing sources and reasonably obtainable data. Some simple field work could have prevented the early waste of resources on the Bruneau hot springsnail and the California gnatcatcher (*see infra*). Population data is important even if the subject species is newly discovered. The historic population data may cover only a short period but the proponents of a listing still must justify its necessity. To make listing decisions consistent with this intent, we also recommend substituting the phrase "best reasonably obtainable scientific information" for "best scientific data available" in Section 4(b)(2) and (b)(3)(A) of the ESA.

Recent changes have occurred within the Interior Department with the establishment of the National Biological Survey. The Biological Survey is composed primarily of research scientists that were formerly with Region 8 of the USFWS. Thus, the USFWS now has little in-house research capability. These organizational changes dictate that some adjustments should be made to give the USFWS more of a support base for endangered species initiatives. Obtaining adequate literature searches or access to scientific sources for many offices within the present organization is difficult, especially in the remote field offices in which the USFWS designs and coordinates much of its recovery programs (Tyus and Vincze 1995). This state of affairs supports the need for the amendments set forth above. The USFWS and NMFS have acknowledged the need for peer review and better data collection (USFWS and NMFS 1994a).

Examples of capricious findings under the current "best scientific data available" standard further support the need for reform. When the Bruneau hot springsnail was first proposed for listing in 1985 the petition stated that there were only two colonies of the snail. 50 Fed. Reg. 33,803 (1985). The listing became final in 1993, despite the fact that we then knew the snail existed in 128 locations. *Idaho Farm Bureau Federation v. Babbitt*, 839 F. Supp. 739, 743 (D. Idaho 1993). In addition, the petition to list the coastal California gnatcatcher stated that the bird was a unique subspecies located in an area from northern Mexico to Los Angeles. This despite the fact that the same scientist who helped draft the petition earlier concluded that the bird was common throughout the west coast and Baja. *Endangered Species Comm. of the Bldg. Indus. Assoc. of Southern California v. Babbitt*, 852 F. Supp. 32 (D. D.C. 1994). The gnatcatcher was listed under the ESA as a threatened species. 58 Fed. Reg. 16,742 (1993). The bureau and building association successfully challenged the listings of the springsnail and gnatcatcher in the courts referenced above (*see also* Bogert 1994).

Another case where reasonably obtainable data could prevent the USFWS from misdirecting resources is the recent petition to list the sicklefin chub and sturgeon chub that inhabit reaches of several inland rivers including the Missouri. This petition failed to include population data on more than 105 locations where the fish were known to exist (see administrative record). The petition to list the chubs is currently under review by the USFWS (60 F.R. 3613 (January 18, 1995)). Without reform, the misdirection of scarce resources will continue.

### Species

The current definition of "species" in Section 3(15) of the ESA reads as follows: "The term "species" includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species or vertebrate fish or wildlife which interbreeds when mature." What is a subspecies? No one is quite sure. I assume it is a replacement for "variety," an equally amorphous term that has something to do with individuals that correspond to a type on a lower taxonomic level than a species. MO-ARK agrees with Mayr (1970) that this concept of subspecies is "fallacious":

Species are not composites of uniform subtypes--subspecies--but consist of an almost infinite number of local populations, each in turn (in sexual species) consisting of genetically different individuals. The difficulties of the subspecies concept are intensified if one considers the subspecies not merely as a practical device of the taxonomist, but also as a "unit of evolution." The better the geographic variation of a species is known, the more difficult it becomes to delimit subspecies and the more obvious it becomes that many such delimitations are quite arbitrary (Mayr 1970).

Arbitrary terms within a definition are a recipe for conflict. MO-ARK recommends striking the current definition of species and substituting the following: "The term "species" includes species of fish or wildlife or plants and any phenotypically similar population of a species inhabiting a geographic subdivision of the range of the species, and excludes polymorph variants." This amendment strikes the term "subspecies," clarifies the intended meaning of "population segment," and correctly excludes "polymorph variants."

Polymorphism is an *intrapopulation* phenomenon. Polymorph variants are sometimes so different from the "normal" type of the population that they have been mistakenly described as separate species (Mayr 1970). "This they are not, nor are these intrapopulation variants subspecies or races" (Mayr 1970). Polymorphism is widespread: "In birds more than 100 cases are known in which a morph was originally described as a separate species" (Mayr 1963, 1970; Ford 1964, 1965). The revised definition of "species" will help us spend our resources on the preservation of species more wisely and with less attendant conflict.

### Critical Habitat

The current definition of "critical habitat" in Section 3(5) must be revised to incorporate the proffered definition of "range" and to consider existing "anthropogenic" alterations. MO-ARK recommends substituting the following language for the present Section 3(5)(C): "(C) Except in those circumstances determined by the Secretary, critical habitat shall not include the entire range of the threatened or endangered species, and shall not include geographic subdivisions of a species range where existing anthropogenic alterations likely preclude successful reintroduction of a species as a part of a self-sustaining ecosystem." For ease of comparison, the present Section 3(5)(C) reads as

follows: "(C) Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species."

We agree with the National Research Council's assessment that:

The ecological relationship is simple and fairly general: species diversity is positively correlated with habitat area. A corollary of this relationship is that if habitat is substantially reduced in area or degraded, species occurring in the wild will be lost. Therefore, habitat protection is a prerequisite for conservation of biological diversity and protection of endangered and threatened species (NRC 1995).

The Department of Interior's Report to Congress (USFWS 1992) points out a general problem with the recovery process. The report states that "[o]ften it is not recognized that the Endangered Species Act is ecosystem and habitat oriented. However, major sections of the Act focus on the conservation of ecosystems upon which endangered and threatened species depend. . . . Consideration of ecosystem integrity in prelisting, listing, and recovery activities is of utmost importance in actually helping to conserve ecosystems and the diversity they provide" (USFWS 1992). In the past, the Department itself has often not recognized that the ESA is ecosystem and habitat oriented. Nevertheless, most of the recovery plans to date do not use the "multi-species" or "ecosystem" approach (USFWS 1992). The focus on listing is detrimental to recovery. The ecosystem approach which stresses habitat preservation is the only approach that can sustain species without intensive management.

The USFWS and NMFS have given notice (USFWS and NMFS 1994b) that they will strive to incorporate ecosystem considerations in ESA actions, including recovery programs. These agencies will, in part, promote the development of "ecosystem recovery plans" that will consider the needs of all candidate, threatened or endangered species in an area, and seek to integrate research and technological developments in the recovery of listed species.

The habitat conservation approach necessarily calls for preservation of suitable habitat within a defined range. Every range has a fringe that naturally varies over time. Gaps in suitable habitat at the fringe are normal and must not be mistaken as habitat destroyed by development. The habitat conservation approach may require that land be set aside and the adaptation of land use and development within the given range. The best approach will recognize a species' range and assimilate this information with the ranges of other species to define the common critical habitat to support a sustainable ecosystem. A managed ecosystem is an oxymoron. If management is necessary, then the ecosystem is not self-sustaining and will necessarily suffer imbalances that will affect the survivability and evolution of the subject species.

In addition, we cannot ignore the reality of the present state of development when defining critical habitat and range. Under Section 4, the Secretary can exclude areas from critical habitat if it is determined that "the benefits of such exclusion outweigh the benefits of specifying such area," unless failure to designate the area "will result in the extinction of the species concerned" (16 §1533(b)(2)). Given that "natural and anthropogenic environmental changes affect the range of biophysical and socioeconomic possibilities for future states of the system" (NRC 1995), critical habitat must necessarily exclude portions of a species historic range where existing infrastructure and development preclude reintroduction of a species. Establishing green belts is preferable to habitat restoration, especially if we must artificially maintain restored habitat.



Every proponent of a habitat restoration project should answer whether the project is sustainable given the current uses of the surrounding media. Restoration of such habitat should only proceed in such areas where restoration is a part of a plan for a self-sustaining ecosystem. The introduction of the American Peregrine Falcon in city scapes is an example of a successful reintroduction effort that takes into consideration anthropogenic environmental alterations. Modification of existing infrastructure may be warranted where we can answer the above question affirmatively with reasonable scientific certainty.

The exclusion from critical habitat of existing anthropogenic alterations that likely preclude successful reintroduction of a species is consistent with federal regulation relating to experimental populations: "Before authorizing the release as an experimental population of any population of an endangered or threatened species . . . the Secretary shall . . . consider . . . (2) The likelihood that any such experimental population will become established and survive in the foreseeable future; . . . (4) The extent to which the introduced population may be affected by existing or anticipated federal or state actions or private activities within or adjacent to the experimental population area." 50 C.F.R. § 17.81 (1994).

For consistency in scope and purpose, we also must revise the method for designating critical habitat under Section 4(6)(C). MO-ARK agrees with the National Research Council that "habitat should be designated for protection at the time of listing a species as endangered . . ." (NRC 1995). To date, critical habitat has been designated for less than 20% of all species listed in the United States (NRC 1995). This lack of certainty over what may be designated critical habitat retards development without affording the subject species the full protection of the Act.

In the event critical habitat is not determinable at the time of listing, however, the Secretary is authorized to extend the period to make such a designation for one additional year and "must publish a final regulation, based on such data as may be available at that time, designating, to the maximum extent prudent, such habitat." This section would be improved by striking "based on such data as may be available at that time, designating, to the maximum extent prudent, such habitat" and inserting "*based on the best reasonably obtainable scientific information, designating critical habitat to the extent prudent.*" Of course, such a designation would have to be consistent with the amended definition of "critical habitat." As discussed below, negotiated habitat conservation plans represent a better approach to species preservation than designating critical habitat.

### Take

The ESA makes it unlawful for any person to "take" endangered or threatened species (Section 9(a)(1)(B)). The term "take" means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (Section 3(18)). MO-ARK recommends adding the following language to the end of this definition: "but excludes the modification or destruction of habitat by a permitted activity under an approved conservation plan, or the modification or destruction of habitat not designated as critical habitat and not included in an approved conservation plan." This language will provide an incentive for the government to designate critical habitat upon listing a species. This will make the process more certain, require an evaluation of the economic impact of such an action as required when critical habitat is designated, and limit the potential for otherwise lawful activities to constitute a prohibited "take" since the destruction of habitat not designated as critical will not be unlawful. Furthermore, it will ensure that activities covered by an "incidental" take permit are not considered direct action against an endangered or threatened species if the activity modifies habitat.

Of course, the definition of "take" under 50 C.F.R. § 17.3 must be revised to accord with the proffered amendment to the definition of "take" set forth above. The regulation defines "harm" to include "significant habitat modification or degradation where it actually kills or injures wildlife." The regulation should define "harm" to include "significant modification or degradation of *critical habitat* where it actually kills or injures wildlife *unless the activity is permitted under an approved conservation plan.*"

The Supreme Court decision on June 29, 1995, *Babbitt v. Sweet Home Chapt.Comms. For Ore*, 1995 U.S. Lexis 4463, calls for a legislative clarification of the meaning of the term "take." The Court addressed the issue whether the Secretary of the Interior exceeded his authority under the ESA by promulgating a regulation that defines "take" to include habitat modification. Recall, that under the ESA the term "take" means, in part, to "harm" (Section 3(18)). The subject regulation defines "harm" to include "significant habitat modification or degradation where it actually kills or injures wildlife" (50 C.F.R. § 17.3). Small landowners, logging companies, and families dependent on the forest products industry sued to challenge the regulation. The Court upheld the regulation on the grounds that (i) an ordinary understanding of the word "harm" supports it; (ii) the broad purpose of the ESA supports the Secretary's decision to extend protection against activities that cause the precise harms Congress enacted the statute to avoid: "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved . . ." (16 U.S.C. § 1531 (b)); and, (iii) "the fact that Congress in 1982 authorized the Secretary to issue permits for takings that § 9 (a) (1) (B) would otherwise prohibit, "if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity," 16 U.S.C. § 1539 (a) (1) (B), strongly suggests that Congress understood § 9 (a) (1) (B) to prohibit indirect as well as deliberate takings." *Id.* at 13--20.

Clarifying language is necessary to avert the concerns raised in the dissenting opinion: "The Court's holding that the hunting and killing prohibition incidentally preserves habitat on private lands imposes unfairness to the point of financial ruin--not just upon the rich, but upon the simplest farmer who finds his land conscripted to national zoological use." *Id.* at 46. And to quote the dissent again, we clearly must avoid having a "large number of routine private activities--farming, for example, ranching, roadbuilding [sic], construction and logging-- . . . subjected to strict-liability penalties when they fortuitously injure protected wildlife, no matter how remote the chain of causation and no matter how difficult to foresee (or to disprove) the "injury" may be (e.g., an "impairment" of breeding)." *Id.* at 58.

### Conservation and Recovery Plans

The recommended amendments to Sec. 4(f) of the ESA are designed to increase participation in the listing and recovery processes by private parties. The amendments also will serve to enhance the conservation of critical habitat while allowing for economic growth.

The proposed amendments help ensure that the USFWS will develop recovery plans after the agencies list a species. Hence, under Section 4(f)(1), "Recovery Plans," MO-ARK recommends striking the escape clause "unless he finds that such a plan will not promote the conservation of the species" so that the Secretary must develop and implement recovery plans. Listing a species without a plan, albeit even a passive one, will help ensure that there is a scientific basis for a listing. This process also will serve to provide some objective criteria for delisting a species in the future. A perpetual listing does not serve any environmental or economic interest.

Furthermore, we recommend inserting a provision in Section 4(f)(1) that will allow the

Secretary to adopt a conservation plan as the recovery plan. This increases participation by private parties and enhances conservation while allowing for economic growth. Section 10 governing permits provides for conservation plans. In the 1982 amendments to the ESA, Congress established a provision in Section 10 that allows for the "incidental take" of listed species by non-Federal entities. An incidental taking is defined under Section 4(d) as "incidental to, and not the purpose of, the carrying out of an otherwise lawful activity." Prior to this amendment, the ESA prohibited all takings under Section 9. Obviously, prior to the 1982 amendments a non-Federal party risked a taking violation in the context of conducting an otherwise lawful activity. The incidental take permit process which includes the development of conservation plans was devised to resolve this incongruity. Conservation plans under Section 10 of the ESA provide an opportunity for species protection and habitat conservation within the context of non-Federal development and land use (USFWS 1994d). In addition, they are a proactive way to reduce threats to candidate species which may preclude the need to list some species.

Private parties can utilize conservation plans to frame the parameters of habitat and species recovery efforts and thereby reduce conflicts with economic interests. Congress intended that the permit process would be utilized to reduce conflicts between federally listed species and non-Federal development (H.R. Rep. No. 97-835, 97th Congress, Second Session). It intended conservation plans to allow for the realization of two seemingly disparate goals: "(1) conservation of federally listed and candidate species as well as overall biological diversity; and (2) protection of the economic interests of non-Federal landowners" (USFWS 1994d).

In addition, under Section 4(f), the preparation or revision of recovery plans by the USFWS must be coordinated and consistent with the terms of any conservation plan. This existing provision is desirable for the foregoing reasons. It also supports the concept of adopting a conservation plan as the recovery plan.

Furthermore, Section 4(f) should be amended to require the Secretary to give priority to passive ecosystem conservation measures and to the implementation of conservation alternatives with the least economic and social costs. Section 4(f) should require disclosure of "estimated economic impacts" in the recovery plan. This will provide an incentive to implement conservation alternatives with the least economic costs and may serve to increase the use of conservation plans to achieve environmental objectives.

### **Public Participation**

With respect to the proposed listing of endangered and threatened species and the designation or revision of critical habitat under Section 4 of the ESA, it is desirable to increase public participation in the process. MO-ARK suggests expanding the content of the Section 4 notice of a proposed regulation in the Federal Register and in a newspaper of general circulation in each affected area to include "dates and locations of hearings in each State which contains the subject species and critical habitat." Furthermore, we recommend striking paragraph (5)(E) which reads: "promptly hold one public hearing on the proposed regulation if any person files a request for such a hearing within 45 days after the date of publication of general notice" and inserting in its place the following language: "hold at least one public hearing in each State which contains the subject species and critical habitat within 60 days after the date of publication of the general notice."

In addition, Section 4(b)(3)(A) regarding whether a petition to list a species is warranted must be amended. This subsection reads in part: "To the maximum extent practicable, within 90 days after



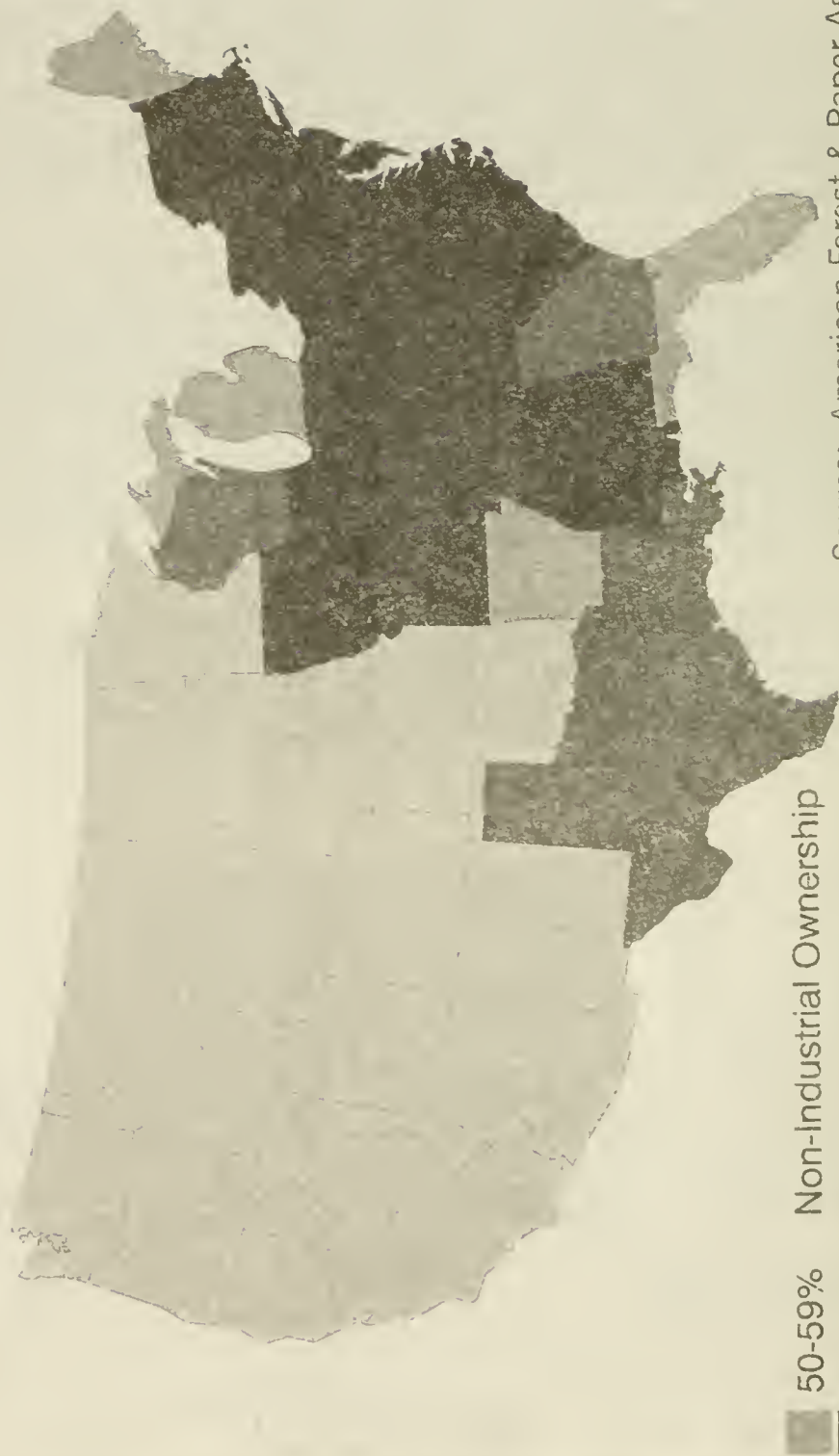
receiving the petition of an interested person . . . to add a species to, or to remove a species from, either of the lists . . . , the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted." This subsection should be amended to read: "*Within 120 days* after receiving the petition of an interested person . . . to add a species to, or to remove a species from, either of the lists . . . , the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, *which information must include historic population data within the species range. If the Secretary does not make a finding within 120 days after receiving the petition, the petitioned action shall be deemed not warranted, and such findings shall be subject to judicial review.*" This amendment will provide adequate time for private parties to submit written comments and will help ensure that reasonably obtainable information is made a part of the record. It also requires the Secretary to make a finding in a determinate time so as not to forestall development decisions indefinitely.

### Conclusion

America has an opportunity to create a win-win outcome for our endangered species and economy when we reauthorize the Endangered Species Act. Congress should reform the ESA to (1) improve the rate of recovery of endangered and threatened species in part by recognizing the commercial value of species and by providing private incentives to recover species; (2) conserve critical habitat while maintaining economic growth; (3) refine the listing process and the designation of critical habitat to limit any negative impacts on private parties and permitted users of Federal Lands; and (4) increase participation in the listing and recovery process by private parties. We must seize this opportunity for responsible reform. America the beautiful, now and forever.

# Who Owns the Eastern Forest?

## Ownership Percentages for Small Non-Industrial Landowners



- 50-59% Non-Industrial Ownership
- 60-69% Non-Industrial Ownership
- Over 70% Non-Industrial Ownership

Source: American Forest & Paper Association  
Prepared by International Paper

**TESTIMONY OF TOMMY HOLMES  
BUSINESS AGENT  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL #104  
BEFORE THE HOUSE RESOURCES COMMITTEE**

**March 20, 1996  
Washington, D.C.**

Good Morning. My name is Tommy Holmes and I'm a business agent with Teamsters Union Local #104 in Phoenix, Arizona. On behalf of the over 7,000 members of my local, I want to thank you for allowing me the opportunity to testify before you today.

The majority of my testimony will actually be a video of the Kaibab Mill closure announcement in Fredonia, Arizona. The video will speak for itself. However, I believe its emotional statement will prove to you that there is a critical need to reform the Endangered Species Amendment (ESA).

The Kaibab Forest Products Company sawmill in Fredonia shut its doors last June after more than fifty years of operation. And when those doors closed, 200 good men and women suddenly found themselves without a job. These men and women -- many of them not only natives to Arizona, but natives to Fredonia -- lost their job because the mill couldn't obtain enough timber harvests to protect the Mexican Spotted Owl habitat. This slowed the flow of raw material into the mill from the Kaibab National Forest to a mere trickle.

Now, in big cities like Phoenix, 200 lost jobs might not have much of an impact. But in Fredonia, which had a population of 1,200, the mill closure was terrifying news. Our members even offered to take a paycut to keep the mill in operation. Now the entire city's demographics have changed. Some of our members have left the area. Others have accepted jobs with low wages and minimum benefits just so they could put food on the table. Tourists have moved in at an astonishing rate, bringing with them seasonal residency and limited dedication to the community's well being.

Life in Fredonia literally revolved around the mill and as you'll see in the video, the employer and their employees were devastated by and frustrated with the closure. Mr. Chairman, balanced forest management throughout the nation and a reformed ESA are needed. This video shows you the exact reason why.

((VIDEO))

Mr. Chairman, the Fredonia story is only one of many that have happened throughout the nation, particularly in the Pacific Northwest and Northern California. The men and



women of the forest products industry appreciate and understand the efforts of environmental interest groups to preserve our natural resources and wildlife. But our efforts to protect forests and animals must be balanced with the need to protect people and communities. Unfounded lawsuits, appeals, conflicting laws and regulations as well as overall misinformation have affected the lives of tens of thousands of men and women who depend on natural resources for their livelihoods.

I encourage the committee to change the ESA so that not only will it protect wildlife, but it will also allow sound forest management which provides timber for milling. There is no reason we cannot do both. Our union stands ready to help you accomplish this in order to balance environmental interests with economic and social needs of people and communities. Please don't let the story of Fredonia be repeated over and over again.

Thank you.

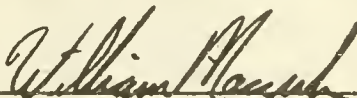
# RESOLUTION OF THE BOARD OF DIRECTORS

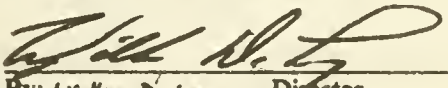
## MISSOURI LEVEE & DRAINAGE DISTRICT ASSOCIATION, INC.

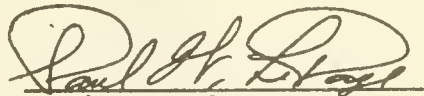
A meeting of the board of directors of the Missouri Levee & Drainage District Association, Inc. was held on March 9, 1996, at Columbia, Missouri. Among other resolutions, the board of directors adopted the following resolution relating to much needed reform of the Endangered Species Act.

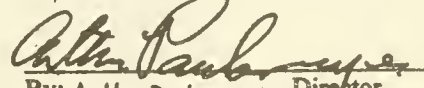
RESOLVED that the Missouri Levee & Drainage District Association, Inc. supports amending the Endangered Species Act (ESA) as follows:

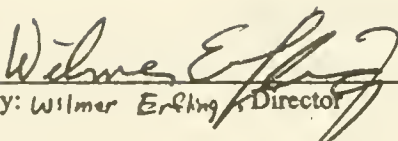
1. The ESA must expressly recognize the commercial value of endangered and threatened species since free enterprise is one of the most powerful tools to preserve species.
2. The ESA must allow for permits to propagate species for commercial use.
3. The ESA must provide better scientific standards that will serve to reduce conflicts between farming and overly broad environmental mandates.
4. The ESA must define the term "range" to provide more certainty to the process of designating critical habitat and to reduce conflicts over the regulatory taking of private property.
5. Section 4 of the ESA, which bases listing decisions on "the best scientific and commercial data available," must be amended to include a qualitative component. Under the current language, the Secretary of Interior can make listing decisions based on the best available data regardless of its quality and seemingly without a thorough compilation of existing data.
6. The ESA must limit the potential for otherwise lawful activities, such as farming in areas that traditionally have been farmed, to constitute a prohibited "take" of an endangered species.
7. The ESA must allow for increased public participation in the processes of listing endangered and threatened species and in designating critical habitat.

  
By: William Maczek, Director


  
By: William D. Lay, Director

  
By: Paul L. LePage, Director

  
By: Arthur Paulsmeyer, Director

  
By: Wilmer Erling, Director

\_\_\_\_\_  
By: \_\_\_\_\_, Director

  
By: Tom Waters, Director

\_\_\_\_\_  
By: \_\_\_\_\_, Director

\_\_\_\_\_  
By: \_\_\_\_\_, Director



# MISSOURI LEVEE DRAINAGE DISTRICT ASSOCIATION, INC. MEMBERSHIP

COLE JUNCTION LEVEE DISTRICT*	JEFFERSON CITY
CEDAR CITY DRAINAGE DISTRICT	JEFFERSON CITY
MISSOURI SOYBEAN ASSOCIATION	JEFFERSON CITY
PAUL LePAGE*	JEFFERSON CITY
PEGGY D. RICHARDSON	JEFFERSON CITY
MICHAEL FORCK	JEFFERSON CITY
RICHARD O. McCARTY	JEFFERSON CITY
CAPITAL VIEW DRAINAGE DISTRICT	JEFFERSON CITY
MISSOURI-ARKANSAS RIVER BASIN ASSOCIATION	KANSAS CITY
JODILL CORP.-JAY DILLINGHAM	KANSAS CITY
McNEALL FARMS, INC.	KEYTESVILLE
FORTMEYER LEVEE*	LEVASY
DONALD ARTH	MALTA BEND
JACOBS & JACOBS FARMS	MARSHALL
W.C. FLETCHER, JR.	MARSHALL
BILL JACKSON	MARSHALL
EARL STOLTE*	MARYLAND HEIGHTS
PAUL A. SEIGFREID*	MEXICO
STUART KASE*	NEW HAVEN
BERGER LEVEE DISTRICT*	NEW HAVEN
GARY MELGER	O'FALLON
EGYPT LEVEE & DRAINAGE DISTRICT	ORRICK
JACK HORINE*	ORRICK
TOM TOWNSEND	ORRICK
LUMAN OFFUTT	ORRICK
MICHAEL T. WATERS	ORRICK
TOM WATERS*	ORRICK
MISSOURI VALLEY DRAINAGE & LEVEE DISTRICT*	ORRICK
ROBERT J. VINCZE	OVERLAND PARK
CARL LENSING*	RHINELAND
HERMANN MOTOR COMPANY	RHINELAND
COOP ASSN. #130 (MFA)*	RHINELAND
ROGER FRAY	RICHMOND
JOHN L. WILLIAMS	RICHMOND
CINDY WHITE	RICHMOND
BILL BUFFINGTON FARMS, INC.	SALISBURY
CONSOLIDATED NORTH COUNTY LEVEE DISTRICT*	ST. CHARLES
RAY MACHENS*	ST. CHARLES
HALLS LEVEE DISTRICT	ST. JOSEPH
LEONARD STEPHENS*	TRIPLETT
MISSOURI BOTTOM LEVEE DISTRICT*	WARRENTON
ROGER STEINMANN	WRIGHT CITY
* CHARTER MEMBERS	

# MISSOURI LEVEE DRAINAGE DISTRICT ASSOCIATION, INC. MEMBERSHIP

S.G.R.S.	BOONEVILLE
WOODRIDGE-OVERTON LEVEE DISTRICT	BOONEVILLE
EARL RENFROW	BOONEVILLE
BRUNSWICK RIVER TERMINAL, INC.	BRUNSWICK
BRUNSWICK LEVEE DISTRICT	BRUNSWICK
DEWITT DRAINAGE & LEVEE DISTRICT	BRUNSWICK
BRUNSWICK-DALTON DRAINAGE DISTRICT	BRUNSWICK
LOWER SALT CREEK DRAINAGE DISTRICT*	BRUNSWICK
RON LINNEMAN	CARROLLTON
ARTHUR PAULSMEYER, JR.*	CHAMIOS
A-1 LEVEE ASSOCIATION*	CHAMIOS
CHAMIOS LEVEE DISTRICT 30-B	CHAMIOS
JOHN PELLET*	CHESTERFIELD
MFA INCORPORATE	COLUMBIA
BILL LAY*	FAYETTE
HOWARD COUNTY LEVEE DISTRICT #6-BILL LAY	FAYETTE
NORTHEAST SALINE COUNTY LEVEE DISTRICT #3	GLASGOW
SUE ANN MEYER	GLASGOW
RAY COUNTY LEVEE DISTRICT #2	HARDIN
HARTSBURG LEVEE DISTRICT*	HARTSBURG
MAX AUBUCHON	HERMANN
GLOE FARMS, INC.	HERMANN
MELVIN JACOB*	HERMANN
SCOTT JACOB	HERMANN
MARTIN ROHLFING-ROHLFING BROTHERS	HERMANN
MARVIN ROHLFING-ROHLFING BROTHERS	HERMANN
RUBIN HAEBERLE*	HERMANN
ERIVIN HECK	HERMANN
TRI-COUNTY TRUCKING*	HERMANN
TIM ENGEMANN	HERMANN
HERMAN LOEHNIG, JR.	HERMANN
LYONEL SCHWEERKOTTING	HERMANN
TRI-COUNTY LEVEE DISTRICT #1*	HERMANN
TRI-COUNTY LEVEE DISTRICT #2*	HERMANN
TRI-COUNTY LEVEE DISTRICT #3*	HERMANN
WILMER ERFLING*	HERMANN
REVEAUX LEVEE DISTRICT	HOLTS SUMMIT
ROBERT BRUCH	INDEPENDENCE
RIVER BEND COMPOST, INC.-BILL LARKIN, JR.	INDEPENDENCE
ATHERTON LEVEE DISTRICT*	INDEPENDENCE
MISSOURI RIVER COMMUNITIES NETWORK	JAMESTOWN
WALTER CLARK	JEFFERSON CITY
WESTREN ASSOCIATION	JEFFERSON CITY

## FINAL REPORT

Status Survey for Sicklefin Chub, Sturgeon Chub, and Flathead Chub  
in the Missouri River, Missouri

Missouri Department of Conservation  
Fish and Wildlife Research Center  
1110 South College Avenue  
Columbia, Missouri 65201

Date prepared:  
January 11, 1996

Prepared by:

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## ABSTRACT

The objective of this study was to determine the distribution and abundance of sicklefin chub (Macrhybopsis meeki), sturgeon chub (Macrhybopsis gelida), and flathead chub (Platygobio gracilis) in the Missouri River between the Iowa border in northwest Missouri and the confluence of the Missouri and Mississippi Rivers at St. Louis, in order to assess their status in Missouri. Thirteen historic collection sites were seined on the river between October 31 and November 15, 1994. I collected 163 sicklefin chubs, 112 sturgeon chubs, and 1 flathead chub. Sicklefin chubs occurred at all collection sites and sturgeon chubs occurred at 11 of the 13 sites. The results of this survey do not suggest a decline in the distribution and abundance of sicklefin chubs and sturgeon chubs in the Missouri River, Missouri, since previous surveys. However, they do suggest a further decline in the distribution and abundance of flathead chubs, plains minnows, and western silvery minnows.

Project : Status survey for sicklefin chub, sturgeon chub, and flathead chub in the Missouri River, Missouri.

Period covered: October 25, 1994 to March 15, 1995

Duration of study: October 25, 1994 to March 15, 1995

Objective: To determine the distribution and abundance of sicklefin chub (Macrhybopsis meeki), sturgeon chub (Macrhybopsis gelida), and flathead chub (Platygobio gracilis) in the Missouri River between the Iowa border in northwestern Missouri and St. Louis at the confluence of the Missouri and Mississippi rivers, in order to assess their status in Missouri.

Expected results and benefits: On June 29, 1994, the U.S. Fish and Wildlife Service was petitioned by a group including American Rivers, the Environmental Defense Fund, and Mni Sose Intertribal Water Rights Coalition, the Audubon Society, and the Nebraska Audubon Council, to list the Federal C2 candidates sicklefin and sturgeon chubs as endangered species under the authority of the Endangered Species Act of 1973 (as amended). Sicklefin and sturgeon chubs have declined in abundance in the Upper Missouri River and may be or are likely to become extirpated in some sections (Stewart 1981; Hesse 1993; Hesse et al. 1993; Werdon 1993a, 1993b). In the Missouri River in Missouri, these species were reported to have increased in abundance (Pflieger and Grace 1987). However, the data on which this conclusion was based were collected more than 10 years ago. This study will provide more current information on the distribution and abundance of these species in Missouri and will be used by the U.S. Fish and Wildlife Service to determine whether they should be listed as federally endangered species. Because the flathead chub occurs in the same general habitat as the sicklefin chub and sturgeon chub and because there appears to have been a rapid decline of this Federal C2 candidate

in the Missouri River (Pflieger and Grace 1987, Hesse 1993, Hesse et al. 1993), information obtained on the distribution and abundance of this species in Missouri will be helpful in assessing its status. Information will also be collected on the distribution and abundance of other fish species such as the western silvery minnow (Hybognathus argyritis) and plains minnow (Hybognathus placitus), Federal C2 candidate species, which have declined in the Missouri River, Missouri since the early 1940s (Grace and Pflieger 1985).

Methods: The 13 historic collection sites sampled in late summer and early fall by Grace and Pflieger (1985) were resampled in November 1994 (Fig. 1). These sites were selected by Grace and Pflieger (1985) to adequately represent river reaches and to facilitate comparisons with earlier surveys. Each site generally consisted of a river reach which included several miles of river. Daily river stages for the months of October and November were obtained from the U.S. Army Corps of Engineers at the nearest gaging station upstream of each site to identify river conditions during and prior to sampling. Surface water and air temperature and secchi disk readings were measured at each site. Bottom water velocity was measured for each collection at Sites 6-13 using a Marsh-McBirney water velocity meter. Dominant substrate was visually determined and river mile and bank side of each collection were recorded. Photographs were taken of habitats sampled at each site.

Fishes were sampled using a 25-by 8-foot, 1/4-inch (7.6-by 2.4-m, 6-mm) mesh drag seine to maintain consistency with earlier surveys. Large fishes, and abundant readily identified fishes were counted and released. All other fishes in each collection were preserved separately for subsequent identification and enumeration. Fishes were identified using taxonomic keys and species descriptions found in The Fishes of Missouri (Pflieger 1975) and sicklefin and sturgeon chubs were measured (total length to the nearest millimeter).



Sampling locations were selected to represent a range of habitats, water velocities, and substrates at each site. Habitats sampled fell into three general categories; channel bars, connected bars, and channel margins (Fig. 2). Channel bars were depositional areas in the channel that were surrounded on all sides by water. The shallow flat at the upstream end of the bar (head), the side of the bar adjacent to the channel (channel side), and the side of the bar adjacent to the bank (bank side) were seined where possible. In cases where two adjacent channel bars were sampled, the side of the bar adjacent to the side channel running between the bars is referred to as the chute side. Connected bars were depositional areas, generally downstream of wing-dikes, which were not separated from the bank by water. Connected bars located downstream of wing dikes often had a shallow flat on the upstream end (head) that was seined as well as the side of the bar adjacent to the channel (channel side). Channel margins were shallow water areas along the banks of the river without appreciable deposition adjacent to the bank. Number of collections and area seined at each habitat was determined by the size of the habitat and diversity of substrates and water velocities at that habitat.

Area seined for each collection was estimated by multiplying the length and width of each seine haul, and numbers of sicklefin and sturgeon chubs per total area seined were calculated for each site. Because the numbers of these fishes per total area seined can be affected by the number of habitats seined per site where no chubs were present, I also calculated numbers of sicklefin and sturgeon chubs per area seined including only the collections that contained chubs.

**Results:** Eighty-eight collections were made at the 13 sampling sites on the Missouri River between October 31 and November 15, 1994. Three to 13 collections were made at each site and the area seined at each site ranged from 662 to 4020 m<sup>2</sup> (Table 1). Thirty-seven species and two hybrids and a total of 6,560 specimens were collected at the 13 sites on the Missouri River (Table 2) (see Appendix A for scientific names).

River stages prior to and during sampling at Sites 1-9 were relatively stable, fluctuating less than 2 feet (Fig. 3). Sampling at Sites 10-13 was conducted near the peak of a 6-foot rise. River temperatures varied only slightly between sites ( $13^{\circ}\text{C}$  at Site 11,  $11\text{-}12^{\circ}\text{C}$  at all other sites). Secchi disk readings ranged from 20 to 40 cm.

### Sicklefin Chub

Sicklefin chubs were one of only five species collected at all sites and they occurred in nearly 50% of the collections. These results represent a general upstream extension of the range reported by Grace and Pflieger (1985) who found sicklefin chubs at Sites 3 and 6-13. I collected 163 sicklefin chubs. They were most abundant at Site 6 where 54 fish occurred in 10 of 13 collections. Sicklefin chubs ranged in size from 27 to 82 mm total length (Fig. 4a). Adult sicklefin chubs are typically 61-94 mm long with a maximum length of 102 mm (Pflieger 1975). The number of sicklefin chubs per total area seined was greatest at Sites 6 and 8, while the number per area seined in habitats where sicklefin chubs were found was greatest at Sites 6 and 10 (Fig. 5a). High water levels during sampling at Sites 10-13 may have affected their abundance at these sites, however.

Sicklefin chubs were present in at least one collection at 13 of the 16 channel bars sampled. They were present in collections at the head, channel side, bank side, and between bars (chute side) and were collected most frequently from the channel side of these bars (Table 3). Sicklefin chubs were also collected on 5 of 10 connected bars sampled. They were present in collections at the head and channel side and were collected most frequently at the head of these bars. Sicklefin chubs were present in at least one collection at 11 of 29 channel margin habitats sampled. They were collected at channel margin habitats upstream of notched revetments, upstream and downstream of wing dikes, downstream of chutes, downstream of small tributaries, and over flooded sandbars.

Sicklefin chubs were collected over substrates dominated by silt, sand, gravel, and flooded vegetation but were collected most frequently over sand and gravel substrates (Table 4). Average bottom water velocities where sicklefin chubs were collected ranged from 0.02 to 0.34 m/s. Sicklefin chubs were collected most frequently from areas with average velocities ranging between 0.15 and 0.199 m/s and between 0.30 and 0.349 m/s (Table 5).

### Sturgeon Chub

Sturgeon chubs were collected at all sites except Sites 10 and 11 and were present in 35% of the collections (Table 2). This represents a general upstream extension of the range reported by Grace and Pflieger (1985) who collected sturgeon chubs at Sites 4, 8-11, and 13. I collected 114 sturgeon chubs. They were most abundant at Site 8 and occurred in 6 of 7 collections (53 fish). Sturgeon chubs ranged from 24 to 59 mm total length (Fig. 4b). Adult sturgeon chubs are typically 43-64 mm long with a maximum length of 76 mm (Pflieger 1975). Sturgeon chubs were most abundant at Sites 7 and 8 (Fig. 5b). Although numbers of sturgeon chubs per total area sampled at Sites 1, 2, and 12 were lower than at Sites 7 and 8, their abundance in habitats where they were found at Sites 1, 2, and 12 approached that at Sites 7 and 8. High water levels during sampling at Sites 10-13 may have influenced abundances at these sites, however.

Sturgeon chubs were present in at least one collection at 10 of 16 channel bars sampled. They were present in collections at the head, channel side, bank side, and between bars (chute side) and were collected most frequently from the chute side and bank side of these bars (Table 3). They were collected from 4 of 10 connected bars sampled, but only from the channel side of these bars. Sturgeon chubs occurred in at least one collection at 9 of 29 channel margin habitats sampled. They were collected at channel margin habitats upstream of notched revetments, upstream and downstream of wing dikes, downstream of chutes, and along channel margins with no distinguishing characteristics.



Sturgeon chubs were collected over substrates dominated by silt, sand, gravel, and flooded vegetation but were most frequently collected over gravel substrates (Table 4). Average bottom water velocities where sturgeon chubs were collected ranged from 0.11 to 0.36 m/s. Sturgeon chubs were collected most frequently from areas with average velocities ranging between 0.25 and 0.399 m/s (Table 5).

Eighteen speckled chub x sturgeon chub hybrids were collected at seven sites during 1994 sampling (Table 2). They were present in 12 collections; eight of the 12 collections contained sicklefin chubs and seven contained sturgeon chubs.

#### Associated Species

Twenty-five species occurred in at least one collection with sicklefin and sturgeon chubs (see Appendix B for the number of each species per area seined at each site). Speckled chubs occurred in the greatest percentage of collections with sicklefin chubs (90%) followed by: emerald shiner (85%), red shiner (60%), channel catfish and gizzard shad (50%), sturgeon chub and silver chub (48%), and river carpsucker (45%). Speckled chub also occurred in the greatest percentage of collections with sturgeon chubs (100%) followed by emerald shiner (87%), sicklefin chub (61%), red shiner (58%), river carpsucker (52%), silver chub (45%), gizzard shad (42%), and channel catfish (39%).

Eight fish species were not collected with either sicklefin or sturgeon chubs (common carp, flathead chub, ghost shiner, striped shiner, grass carp, freckled madtom, longear sunfish, and largemouth bass) (Table 2). In addition, blue catfish and white x striped bass hybrids were not collected with sicklefin chubs, and goldeye, silverband shiner, and flathead catfish were not collected with sturgeon chubs. These thirteen species occurred in two or fewer of the 88 total collections, however.

### Flathead Chub

Only one flathead chub was collected during 1994 sampling (Table 2). It was collected at Site 4 at the head of a small channel bar. This may represent a drastic reduction in the range of this species. Grace and Pflieger (1985) reported flathead chubs at all sites but Sites 5, 10, and 12.

### Species of Concern

Thirteen western silvery minnows were collected at Sites 1-5 and four plains minnows were collected at Sites 4 & 5 (Table 2). Grace and Pflieger (1985) collected plains minnows at all sites and western silvery minnow at all sites except Sites 3 & 13. Plains minnows were the most abundant species they collected at Sites 3, 6, 7, 8, 12, and 13, the second most abundant species at Sites 1, 2, 4, and 9 and the most abundant species collected overall (26% of total catch). Pflieger and Grace (1987) believed that these species were declining at that time. My collections suggest a further decline in abundance of these species.

Conclusions: The results of this survey do not suggest a decline in the distribution and abundance of sicklefin chubs and sturgeon chubs in the Missouri River, Missouri, since the previous survey by Grace and Pflieger (1985). However, they do suggest a further decline in the distribution and abundance of flathead chubs, plains minnows, and western silvery minnows since previous surveys (Grace and Pflieger 1985, Pflieger and Grace 1987). It should be noted, however, that this survey was conducted in November, while Grace and Pflieger (1985) conducted their survey in August and September. In order to account for possible seasonal variations in habitat use by these fishes, the 13 Missouri River sites should be re-sampled during the same time period as Grace and Pflieger's (1985) collections. This would provide a better basis for comparing present fish abundance data to that of Grace and Pflieger.

Collections of small fishes in the Missouri River during this and previous surveys (Pflieger and Grace 1987) has been limited primarily to habitats which can be sampled by seining. During recent survey work on sicklefin and sturgeon chubs in the Missouri River, Montana. Grant Grisak (personal communication, Montana State University Cooperative Fisheries Research Unit) found that a bottom trawl was an effective means of collecting these fishes in deep-water habitats. Bottom trawling should be evaluated as a method for collecting sicklefin chubs and sturgeon chubs in deep-water habitats in the Lower Missouri River, Missouri. Incorporation of this method in future surveys may provide a better estimate of the distribution and abundance of sicklefin and sturgeon chubs in the Missouri River, as well as a better understanding of these species' habitat use patterns.

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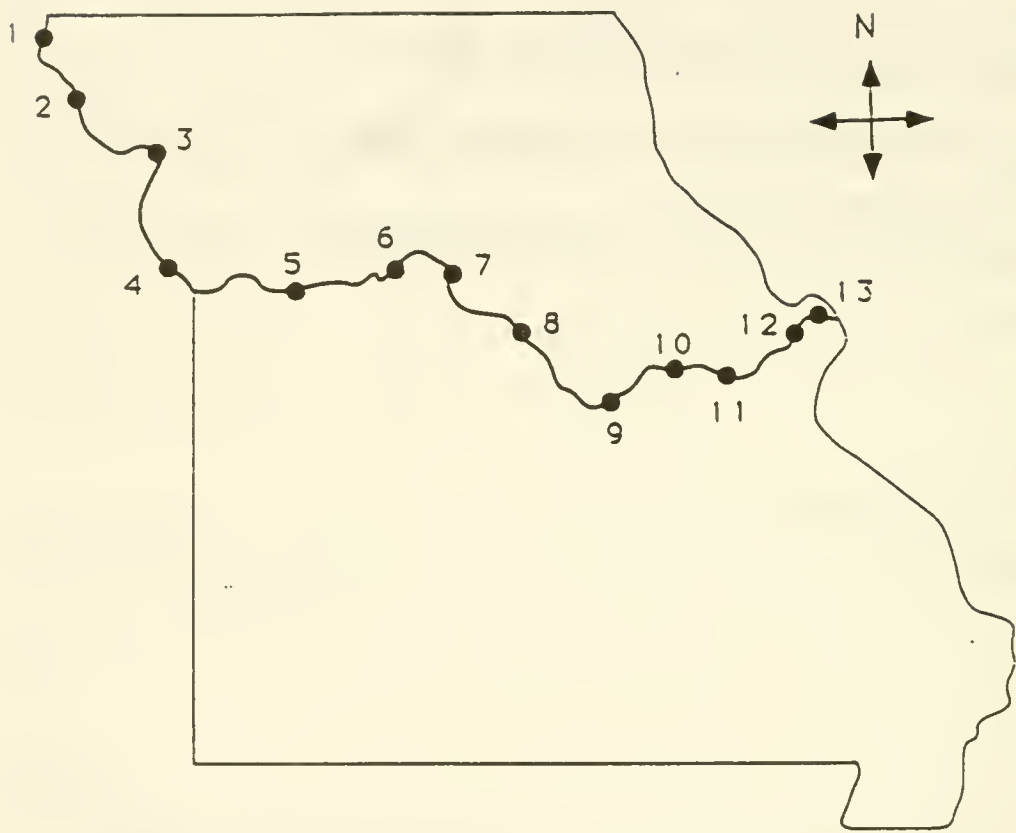


Figure 1. Fish collection sites on the Missouri River, MO.

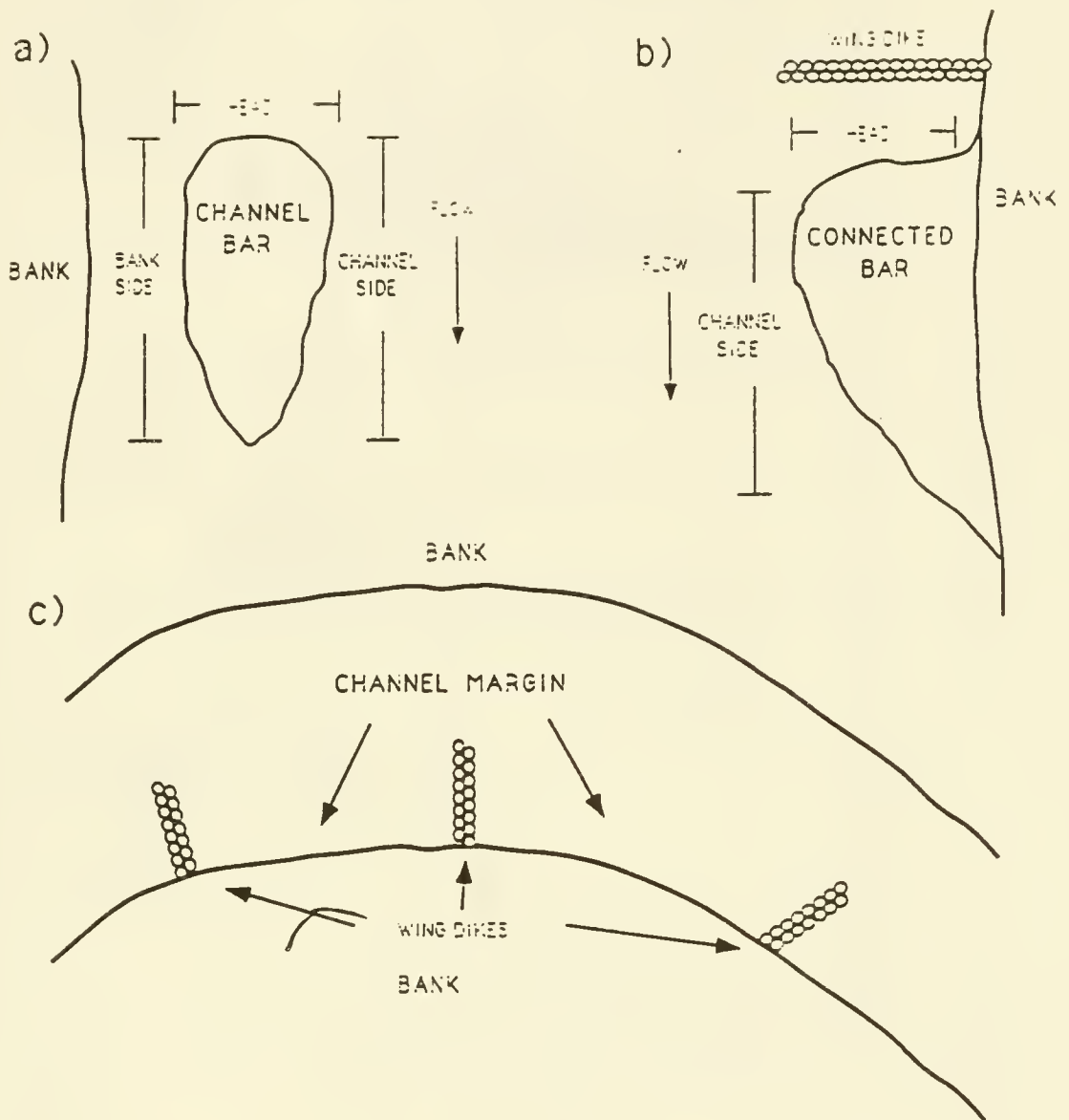


Figure 2. General habitats sampled on the Missouri River, MO in 1994; a) channel bar, b) connected bar, and c) channel margin.



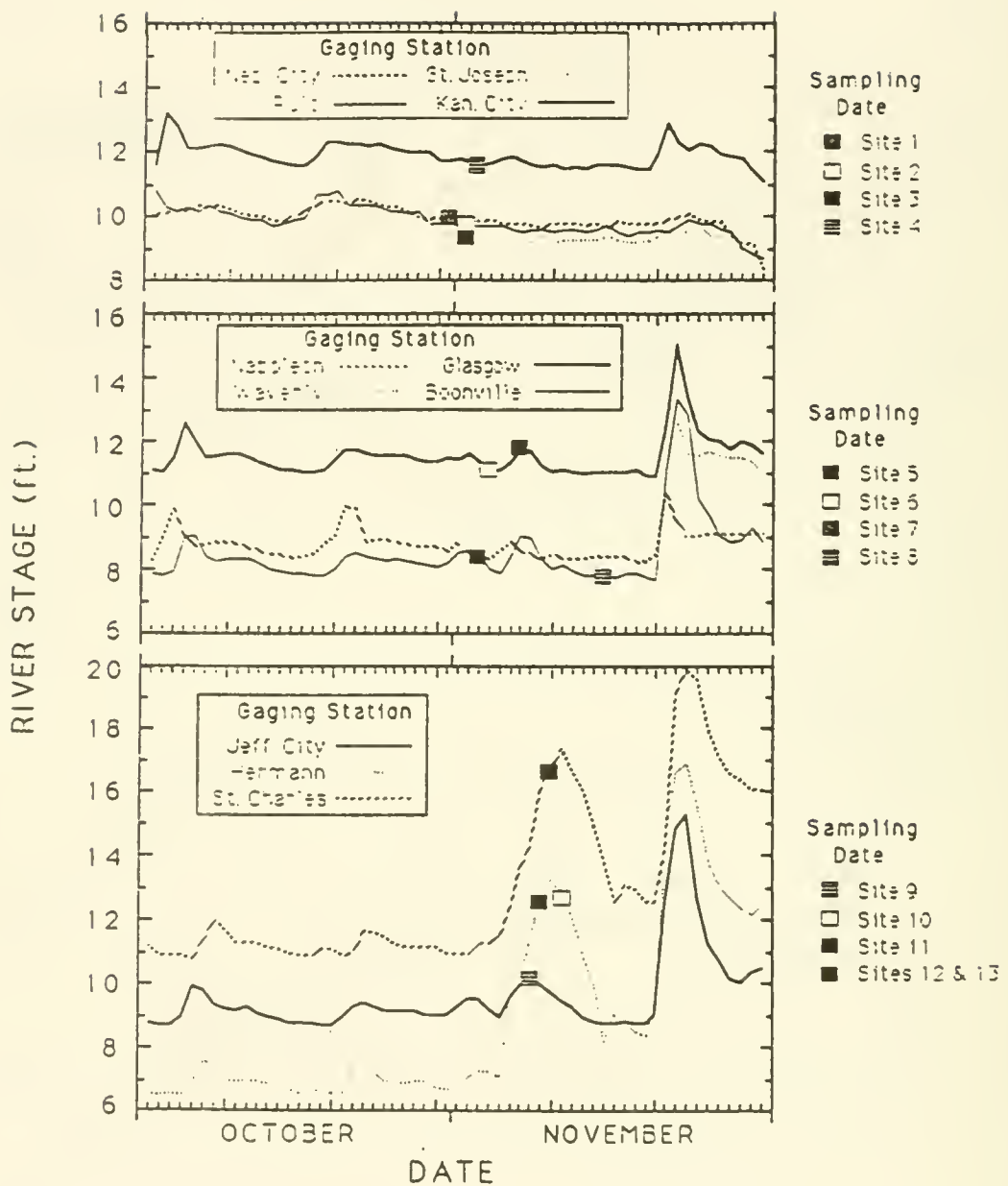


Figure 3. Daily Missouri River stage (USACOE gaging stations) for October and November, 1994 and sampling dates at collection sites on the Missouri River, MI during November, 1994 sampling.

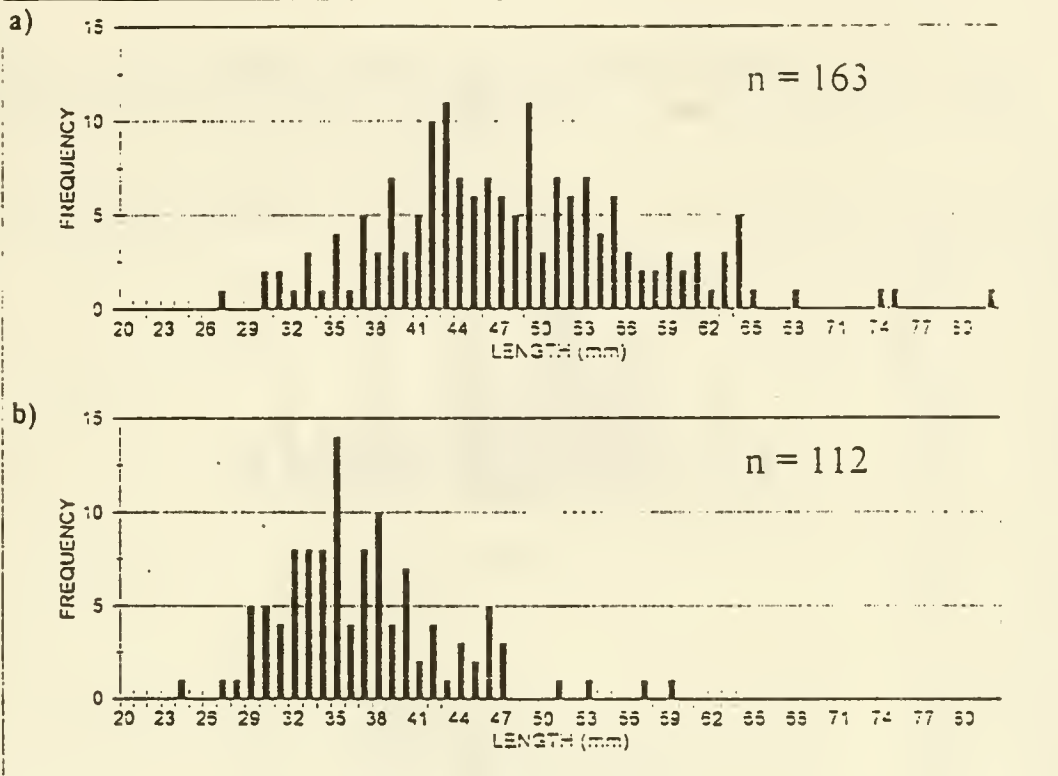


Figure 4. Length frequency of a) sicklefin and b) sturgeon chubs collected during November, 1994 sampling on the Missouri River, MO.

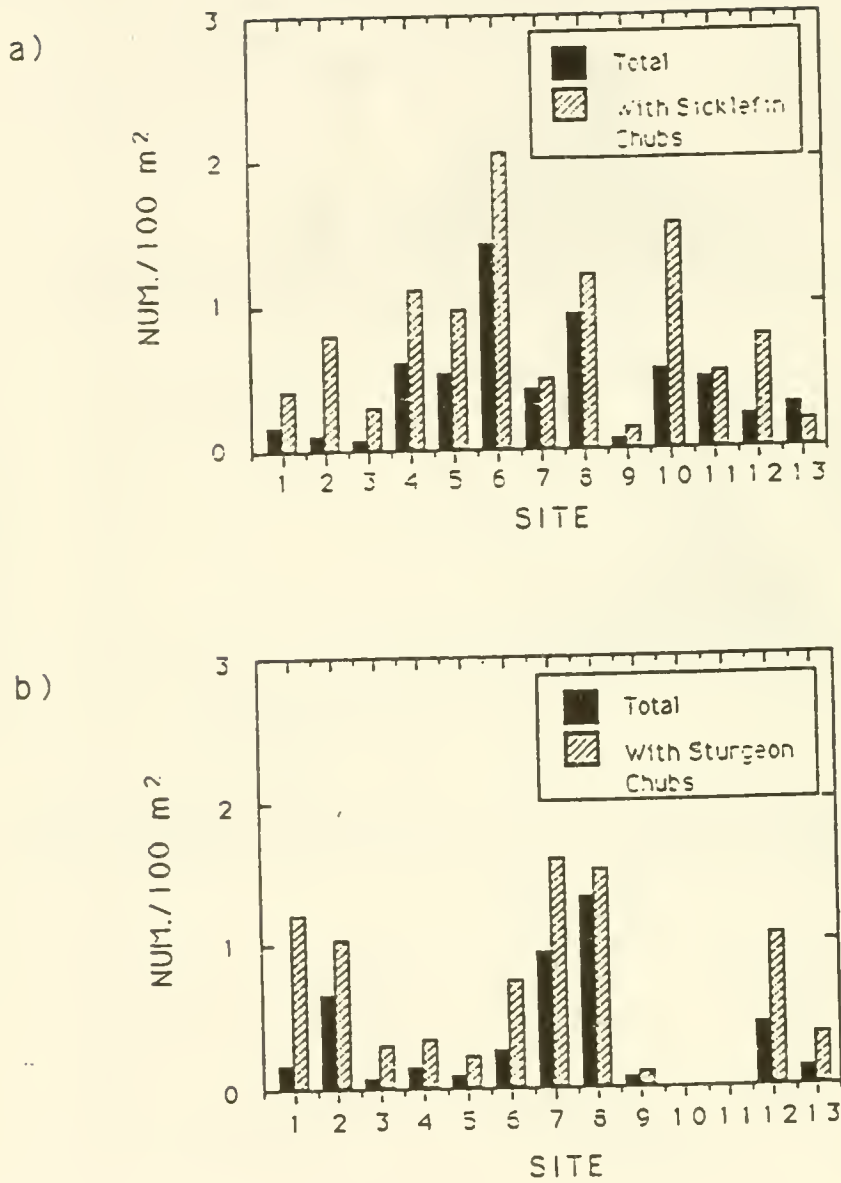


Figure 5. Number of sicklefin chubs (a), and sturgeon chubs (b) per total area seined, and per area seined in habitats where sicklefin or sturgeon chubs were present at each site in the Missouri River, MO, November 1994.



Table 1. Location of collection sites, and summary of collection numbers and dates sampled, including habitats and area seined ( $m^2$ ) during November, 1994 sampling on the Missouri River. Asterisks denote collections which contained at least one sicklefin or sturgeon chub.

SITE	LOCATION AND DATE SAMPLED	COLLECTION	HABITAT	RIVER MILE	AREA
					SEINED ( $m^2$ )
1	BROWNVILLE, NE 10/31/94	1	channel margin	536.0 R	85.0
		*2a,*b	channel margin; upstream of notched revetment	536.3 R	334.4
		3	channel margin; upstream of notched revetment	537.2 L	204.4
		4	channel bar; head	540.4 L	58.3
		TOTAL			662.1
2	RULO, NE 11/01/94	*1	channel margin; upstream of wing dike	505.9 L	167.2
		*2a,b	connected bar; (a) channel side & (b) head	505.9 L	228.5
		*3	channel margin; downstream of wing dike	505.8 L	125.4
		4	channel margin; downstream of wing dike	504.0 R	83.8
		5	connected bar; channel side	502.1 R	158.7
		6	channel margin; downstream of wing dike	501.8 R	130.1
		*7	channel margin; downstream of wing dike	498.9 L	223.0
		TOTAL			1116.5
3	ST. JOSEPH, MO 11/01/94	1a,b	connected bar; (a&b) channel side	454.0 R	594.8
		2	channel margin	455.2 L	408.8
		*3a,b	channel bar; (a) head & (b) channel side	455.8 L	445.9
		4	channel margin	459.3 R	576.0
		TOTAL			2025.3
4	LEAVENWORTH, KS 11/02/94	1	channel margin	391.0 L	483.1
		*2	channel bar; head	391.0 R	483.1
		*3	channel margin; downstream of wing dike	392.0 R	278.7
		4a,b,c	channel bar; (a) channel side, (b) head, & (c) bank side	392.8 L	399.5
		*5	connected bar; channel side, adjacent to channel bar (Coll. 6)	393.0 L	353.0
		*6a,*b	channel bar; (a) head & (b) channel side	393.0 L	250.9
		7a,*b	connected bar; (a) head & (b) channel side	395.0 L	576.0
		TOTAL			2824.3
5	LEXINGTON, MO 11/03/94	*1a,*b	channel bar; (a) head & (b) channel side	324.2 R	781.8
		*2a,*b	connected bar; (a) head & (b) channel side	322.2 L	594.6
		*3	channel margin	323.2 L	278.7
		*4a,b	connected bar; (a) head & (b) channel side	321.5 L	280.1
		5	channel margin; upstream of wing dike	321.6 L	223.0
		*6a,*b	channel bar; (a) channel side & (b) bank side	319.7 R	1560.7
		TOTAL			3678.9
6	MIAMI, MO 11/04/94	*1a,*b	channel margins; (a&b) upstream of wing dikes about 200 m apart	369.2 L	315.8
		*2	channel bar; head	267.4 R	111.5
		*3	channel margin; upstream of wing dike	266.6 L	223.0
		4	channel margin; between wing dikes	266.0 L	445.9
		*5a,*b,c,*d	channel bar; (a&b) channel side & (c&d) bank side	265.8 L	1356.3
		*6	channel margin; downstream of chute	262.0 L	348.4
		7	channel margin; upstream of chute	262.2 L	353.0
		*8a,*b	channel bar; (a) channel side & (b) bank side	262.9 L	659.5
		TOTAL			3813.5
7	GLASGOW, MO 11/07/94	*1a,*b	connected bar; (a) head & (b) channel side	231.9 L	743.2
		*2	channel margin; downstream of wing dike	230.1 L	473.8
		*3	channel margin; between wing dikes	229.1 L	371.6
		4a,b,*c	channel bar; (a) backwater, (b) head, & (c) channel side	227.0 R	1133.4
		TOTAL			2722.0
8	EASLEY, MO 11/15/94	*1a,*b,*c	channel bar; (a) channel side, & (b&c) chute side facing adjacent channel bar, near head of Petite Saline Island	177.3 L	1595.5
		2a,*b	channel bar; (a&b) chute side facing adjacent channel bar (Coll. 1)	177.3 L	1170.6
		*3	channel side of Petite Saline Island	177.2 L	724.6
		*4	channel side of Petite Saline Island	177.0 L	529.5
		TOTAL			4020.2

Table 1. (continued).

SITE	LOCATION	COLLECTION	HABITAT	AREA	
				RIVER MILE	SEINED (m <sup>2</sup> )
9	BONNOTS MILL, MO 11/08/94	*1	connected bar; channel side, near mouth of Osage R.	129.8 L	864.0
		2	connected bar; channel side, near mouth of Osage R.	129.7 L	919.7
		*3	connected bar; channel side, near mouth of Osage R. (Coll.'s 1, 2, & 3 on same connected bar)	129.1 L	1393.5
		TOTAL			3177.2
10	GASCONADE, MO 11/11/94	*1	channel bar; bank side	99.5 L	390.2
		2	channel margin; upstream of wing dike	100.1 R	408.8
		3	channel margin; upstream of small tributary	100.8 R	297.3
		TOTAL			1096.3
11	WASHINGTON, MO 11/09/94	*1	channel margin; downstream of small tributary	77.6 R	501.7
		*2	channel margin; downstream of small tributary	76.5 R	167.2
		*3	channel margin; over flooded channel bar	78.4 L	1440.0
		4	channel margin; upstream of wing dike	75.1 L	185.8
		TOTAL			2294.7
12	ST. CHARLES, MO 11/10/94	1	channel margin; downstream of dry chute	31.3 L	576.0
		*2a,*b	channel bar; (a) channel side & (b) bank side	34.9 L	380.9
		TOTAL			956.9
13	HALLS FERRY, MO 11/10/94	1a,b,c,d	channel bars; upstream end of Car of Commerce chute seined (a&d) head, (c) between bars, & (b) between bank and 1 bar	16.3 R	919.8
		*2a,b	connected bar; upper end of Car of Commerce (C. of C.) chute, (a&b) channel side in C. of C. chute	16.2 R	1124.1
		3a,*b	connected bar; upper end of Car of Commerce chute, (a&b) channel side along mainstem (same bar as Coll. 2)	16.2 R	1373.0
		TOTAL			3416.9





Table 3. Percent frequency of occurrence of sicklefin and sturgeon chubs in collections at various locations around channel bars and connected bars during November, 1994 sampling on the Missouri River, MO. See Fig. 2 for explanation of terms.

Location	Number of Collections	% of Collections with Sicklefin Chubs	% of Collections with Sturgeon Chubs
Channel Bar Collections			
Head	10	30	20
Channel Side	11	72	36
Bank Side	8	50	50
Chute Side	5	40	60
Connected Bar Collections			
Head	5	60	0
Channel Side	16	31	38

Table 4. Percent frequency of occurrence of sicklefin and sturgeon chubs in collections over dominant substrates present during November, 1994 sampling on the Missouri River, MO.

Dominant Substrate	Number of Collections	% of Collections with Sicklefin Chubs	% of Collections with Sturgeon Chubs
Silt	17	29	29
Sand	43	53	35
Gravel	19	53	53
Flooded Vegetation	9	22	11

Table 5. Percent frequency of occurrence of sicklefin and sturgeon chubs in collections with different mean bottom velocities during November, 1994 sampling on the Missouri River, MO.

Average Velocity (m/s)	Number of Collections	% of Collections with Sicklefin Chubs	% of Collections with Sturgeon Chubs
0 - 0.049	7	29	0
0.05 - 0.099	5	40	0
0.10 - 0.149	4	25	25
0.15 - 0.199	12	92	42
0.20 - 0.249	10	60	40
0.25 - 0.299	3	33	67
0.30 - 0.349	4	100	100
0.35 - 0.399	3	0	67



## Appendix A

Table 1. Common and scientific names of fish species collected in the Missouri River, MO during 1994 sampling. Letters in parentheses indicate federal and Missouri status and species introduced to the Missouri River.

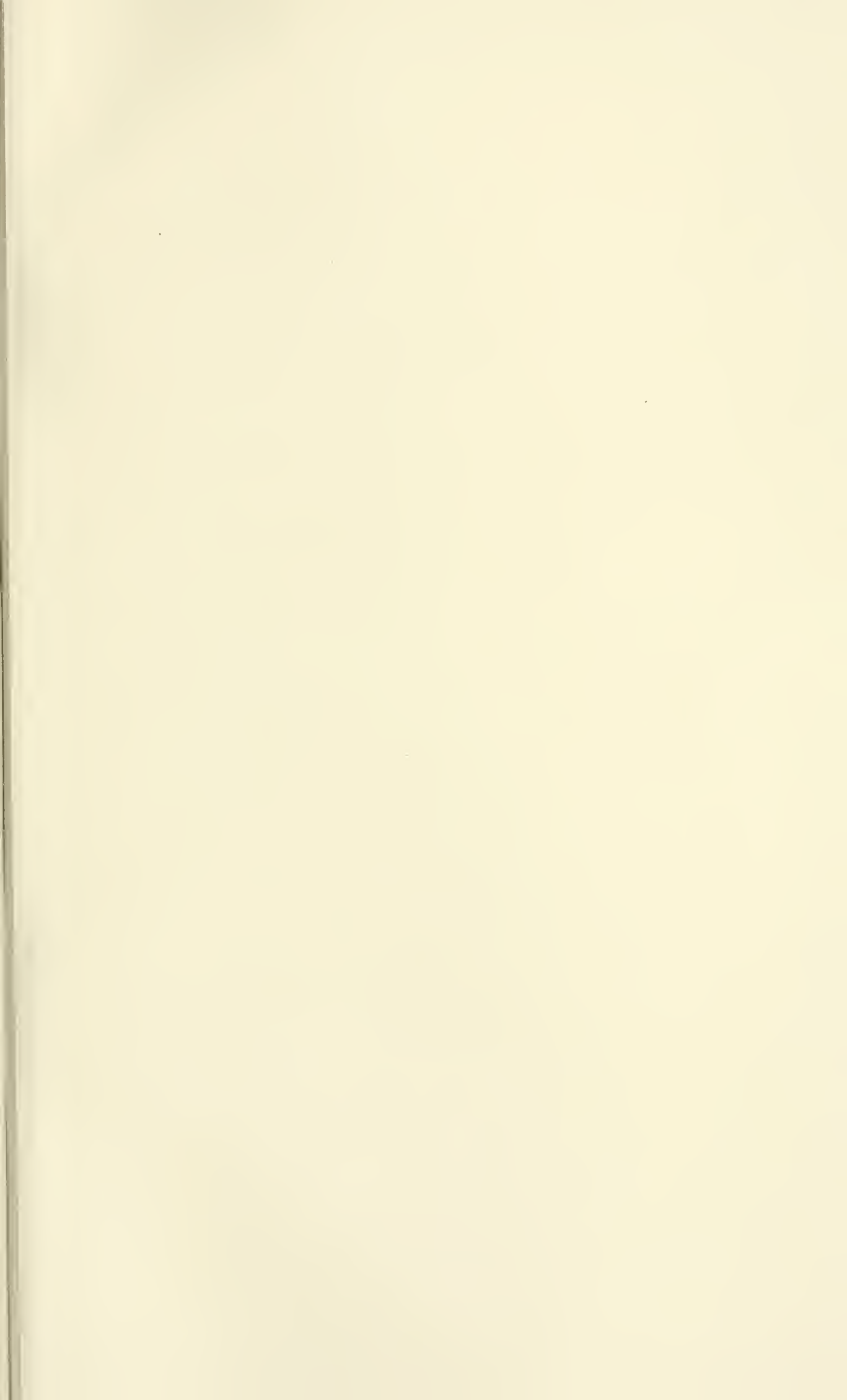
Family	Scientific name	Common name
Acipenseridae	<i>Scaphirhynchus platyrhynchus</i>	shovelnose sturgeon
Hiodontidae	<i>Hiodon alosoides</i>	goldeye
Osmeridae	<i>Osmerus mordax</i>	rainbow smelt
Clupeidae	<i>Dorosoma cepedianum</i>	gizzard shad
Cyprinidae	<i>Cytenopharyngodon idella</i> (ex)	grass carp
	<i>Cyprinella lutrensis</i>	red shiner
	<i>Cyprinus carpio</i> (ex)	common carp
	<i>Hybognathus placitus</i> (C2)	plains minnow
	<i>Hybognathus argyritis</i> (C2)	western silvery minnow
	<i>Macrhybopsis aestivalis</i>	speckled chub
	<i>Macrhybopsis gelida</i> (C1,r)	sturgeon chub
	<i>Macrhybopsis meeki</i> (C1,r)	sicklefin chub
	<i>Macrhybopsis storeriana</i>	silver chub
	<i>Notropis atherinoides</i>	emerald shiner
	<i>Notropis blennioides</i>	river shiner
	<i>Notropis buchanaani</i> (wl)	ghost shiner
	<i>Notropis dorsalis</i>	bigmouth shiner
	<i>Notropis stramineus</i>	sand shiner
	<i>Notropis wickliffi</i>	channel shiner
	<i>Notropis rubellus</i>	rosyface shiner
	<i>Notropis shumardi</i>	silverband shiner
	<i>Notropis chrysocephalus</i>	striped shiner
	<i>Pimephales notatus</i>	bluntnose minnow
	<i>Platygobio gracilis</i> (C2,e)	flathead chub
Catostomidae	<i>Carpionotus carpio</i>	river carpsucker
	<i>Moxostoma macrolepidotum</i>	shorthead redhorse
Ictaluridae	<i>Ictalurus furcatus</i>	blue catfish
	<i>Ictalurus punctatus</i>	channel catfish
	<i>Noturus nocturnus</i>	freckled madtom
	<i>Polydictis olivaris</i>	flathead catfish
Percichthyidae	<i>Morone chrysops</i>	white bass
Centrarchidae	<i>Lepomis macrochirus</i>	bluegill
	<i>Lepomis megalotis</i>	longear sunfish
	<i>Micropterus salmoides</i>	largemouth bass
	<i>Pomoxis nigromaculatus</i>	black crappie
Percidae	<i>Stizostedion canadense</i>	sauger
Sciaenidae	<i>Aplodinotus grunniens</i>	freshwater drum

- (ex) exotic to the Missouri River  
 (E) federally listed as endangered species  
 (C1,C2) federally listed as candidate species  
 (e) listed by Missouri as endangered species  
 (r) listed by Missouri as rare species  
 (wl) listed by Missouri as watch list species

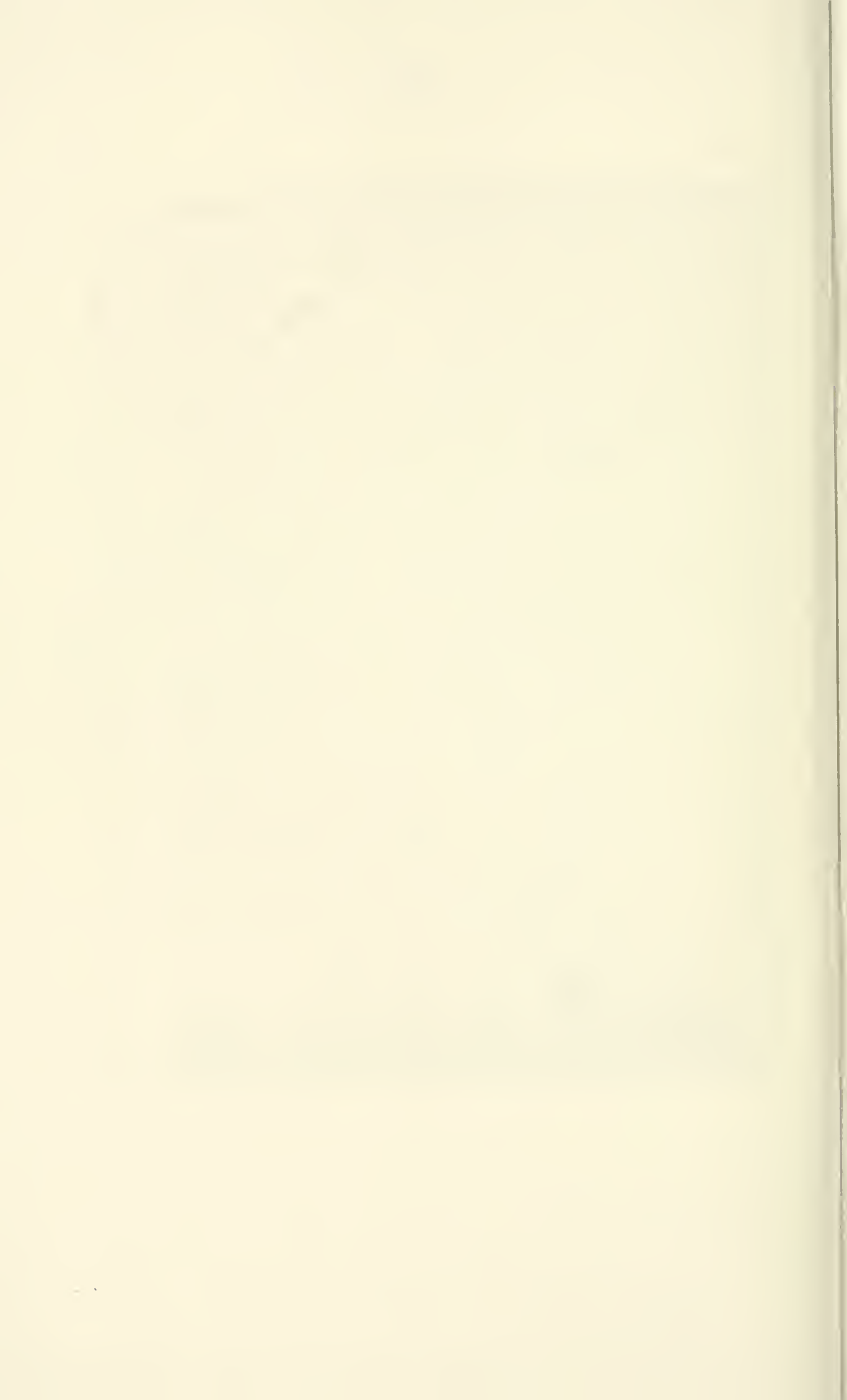
## Appendix B

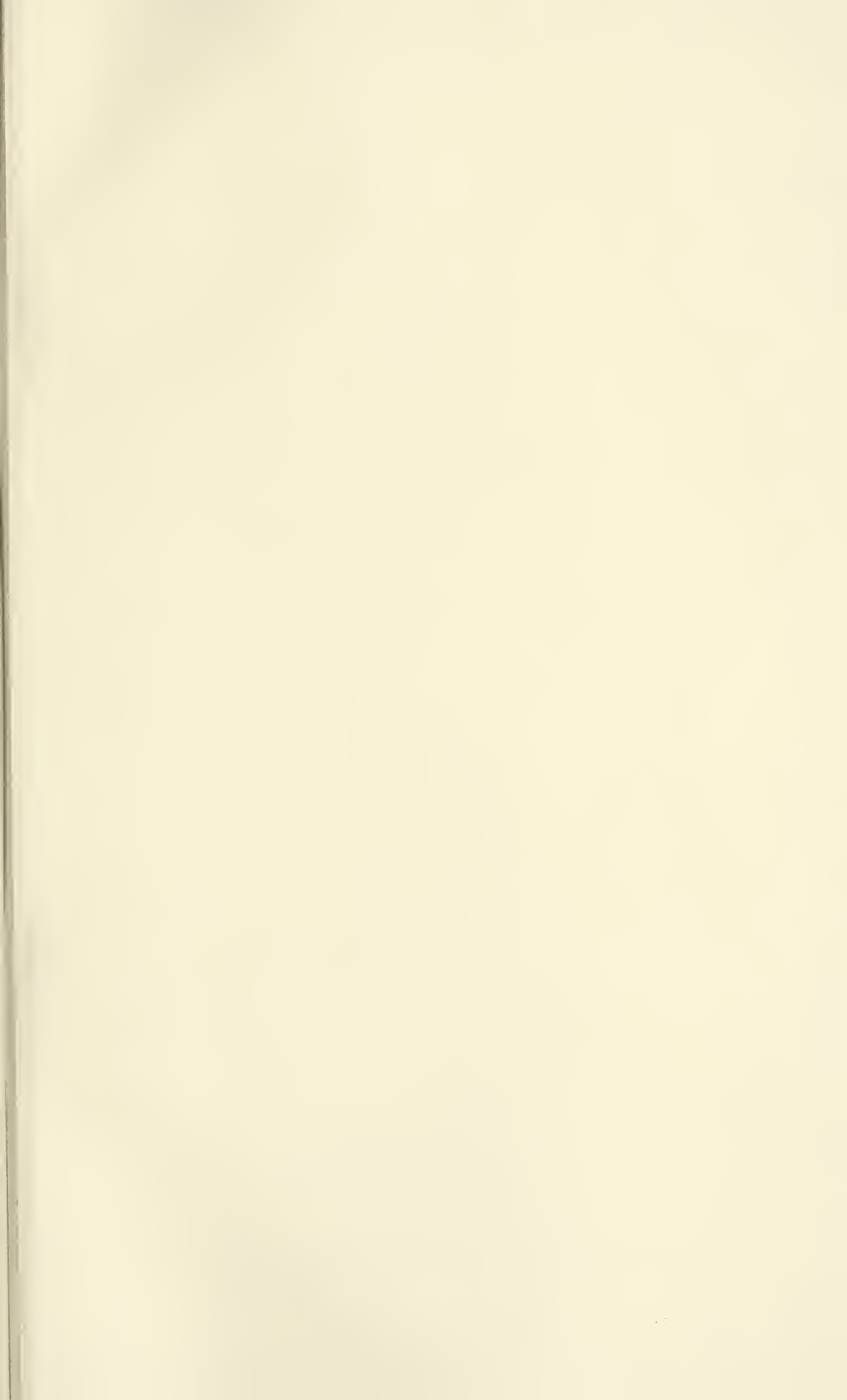
Table 1. Number of all species collected per 1000 m<sup>3</sup> seined at each collection site on the Missouri River, MO during November, 1994

Species	Collection Sites												
	1	2	3	4	5	6	7	8	9	10	11	12	13 Total
emerald shiner	83.1	35.8	79.5	19.8	42.1	23.6	24.3	4.7	4.1	44.7	13.1	28.2	37.8 28.0
speckled chub	48.3	42.1	13.3	31.9	12.5	25.4	23.9	60.9	17.0	3.7	22.7	79.4	45.9 31.2
river carpsucker	4.5	7.2	1.5	3.5	3.3	5.0	83.0	5.2	51.6	49.3	44.5	15.7	212.8 42.9
sicklefin chub	1.5	0.9	0.5	6.0	5.2	14.2	4.0	9.2	0.6	5.5	4.8	2.1	0.3 5.1
gizzard shad	6.0	0.9	43.5	6.0	10.3	45.4	144.0	1.2	6.0	9.1	5.7	14.6	0.6 24.4
red shiner	9.0	3.5	3.5	0.7	6.8	27.3	23.9	0.2	0.6	102.2	47.5	5.2	176.5 32.9
silver chub	13.6	10.7	3.5	4.6	0.3	5.0	0.4		3.1	7.3	12.2	3.1	2.0 3.7
channel catfish	4.5	4.0	0.7	6.5	8.4	35.3	1.0	28.3	75.7	76.7	46.0	42.7	22.3
sturgeon chub	1.5	6.3	0.5	1.4	0.8	2.6	8.2	13.2	0.6				
sand shiner	15.1	7.2	3.5	7.1	7.1	1.0	0.4	0.2		0.4			
rainbow smelt			1.0	0.7	1.1	1.3	1.5	0.7		1.3	8.4		1.8
speckled x sturgeon chub	2.7	1.0			1.4	0.5	0.4	1.0					1.0
freshwater drum	6.0		0.5							23.7	2.2	3.1	0.3 0.6
white bass	1.5			0.4		0.3							0.6 0.2
river shiner	7.6	2.7	2.0	4.6	0.3								0.9 0.9
western silvery minnow	4.5	0.9	2.0	0.4	1.1								0.4
bigmouth shiner		9.9	2.0	3.9	1.1		0.4						
bluegill						0.3			1.6	18.2	7.4	2.1	0.3 1.5
channel shiner									16.4	6.5	6.3	8.2	2.1
common carp					0.3								0.06
flathead catfish				0.4	0.3								0.06
plains minnow				0.7	0.5								0.1
flathead chub				0.1									0.03
goldeye						0.3							0.03
sauger						0.3							0.03
shovelnose sturgeon						0.3	0.4						0.03
bluntnose minnow									0.3		0.4		0.06
shorthead redhorse									0.3		0.4		0.06
white x striped bass												0.3	0.1
blue catfish									0.6				0.03
rosyface shiner									0.3				0.03
striped shiner										1.8	0.4		0.1
longear sunfish									5.5				0.2
largemouth bass									0.9				0.03
black crappie											1.0		0.03
silverband shiner													0.3 0.03
ghost shiner													0.3 0.03
grass carp													0.3 0.03
freckled madtom													0.6 0.06
Totals	193.2	140.8	161.8	86.1	101.0	181.2	351.1	97.5	115.3	364.0	246.6	219.4	535.7 206.33







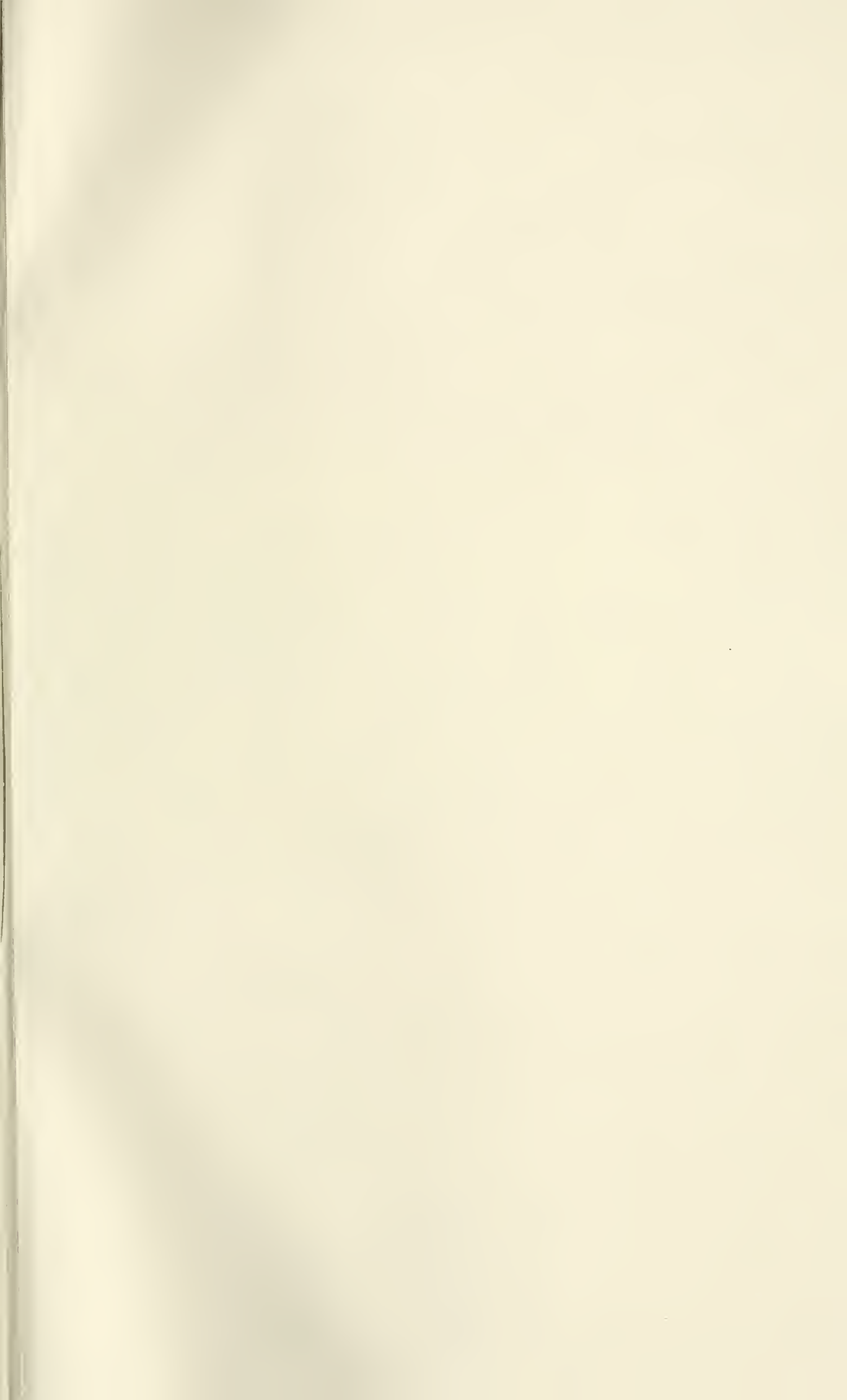


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